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PARTS 100 TO 499

Revised as of July 1, 1986

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Labor

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PARTS 100 TO 499

Revised as of July 1, 1986

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A CODIFICATION OF DOCUMENTS
OF GENERAL APPLICABILITY
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AS OF JULY 1, 1986

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Cite this Code **CFR**

thus: **29 CFR 100.735–1**

READEX FICHE

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16..... as of January 1
Title 17 through Title 27..... as of April 1
Title 28 through Title 41..... as of July 1
Title 42 through Title 50..... as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to display an OMB control number with their information collection request. Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

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JOHN E. BYRNE,
Director,
Office of the Federal Register.

July 1, 1986

THIS TITLE

Title 29—LABOR is composed of seven volumes. The parts in these volumes are arranged in the following order: Parts 0–99, Parts 100–499, Parts 500–899, Parts 900–1899, Parts 1900–1910, Parts 1911–1919, and Part 1920 to End. The contents of these volumes represent all current regulations codified under this title as of July 1, 1986.

Subject indexes appear following the occupational safety and health standards (Part 1910), the safety and health regulations for longshoring (Part 1918), gear certification (Part 1919), and construction (Part 1926).

Redesignation tables appear in the Finding Aids section of certain volumes.

For this volume, Ernie Sowada was the Chief Editor. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Robert E. Jordan.

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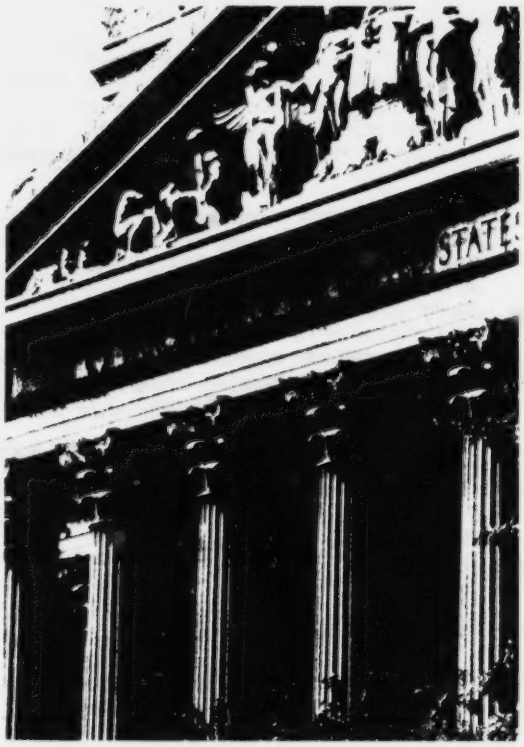

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Title 29—Labor

(This book contains Parts 100 to 499)

Part

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CHAPTER IV—Office of Labor-Management Standards, Department of Labor 401

CROSS REFERENCES: Railroad Retirement Board: See Employees' Benefits, 20 CFR Chapter II.

Social Security Administration, Department of Health and Human Services: See Employees' Benefits, 20 CFR Chapter III.

EDITORIAL NOTE: Other regulations issued by the Department of Labor appear in 20 CFR Chapters I, IV, V, VI, VII; 30 CFR Chapter I; 41 CFR Chapters 50 and 60; and 48 CFR Chapter 29.

Subtitle B—Regulations Relating to Labor

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PART 100—EMPLOYEE RESPONSIBILITIES AND CONDUCT

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AUTHORITY: E.O. 11222 of May 8, 1965, 30 FR 6469, 3 CFR 1965 Supp.; 5 CFR 735.104.

SOURCE: 32 FR 13560, Sept. 27, 1967, unless otherwise noted.

Subpart A—General Provisions

§ 100.735–1 Policy.

In order to assure the proper performance of the Government's business and the maintenance of public confidence, all employees shall maintain high standards of honesty, integrity, impartially, and conduct. The avoidance of misconduct and conflicts of interests, apparent or real, on the part of all employees through informed judgment is indispensable to the maintenance of the standards in this part. Since service is the keystone of the Agency's operations, each person who deals with the Agency is entitled to courtesy and consideration. Not only must his case be treated with fairness—there must not be even the appearance of unfairness.

§ 100.735–2 Responsibilities.

(a) *The Board.* The Board is responsible for the implementation of the regulations in this part with respect to employees under its jurisdiction.

(b) *The General Counsel.* The General Counsel is responsible for the implementation of the regulations in this part with respect to employees under his jurisdiction.

(c) *Agency Counselor.* The Director, Division of Administration, is hereby designated as the Agency Counselor for the purpose of (1) acting as liaison with the Civil Service Commission with respect to matters of employee responsibility and conduct, (2) coordinating the Agency's interpretation and advisory service under § 100.735–3, (3) advising, upon request, Agency officials responsible for reviewing the "Statements of Employment and Financial Interests" provided for in Subpart C of this part, (4) directing employees to review the regulations in this part annually, and (5) implementing and applying the regulations in this part. The Assistant Director, Divi-

sion of Administration, and Director of Personnel are hereby designated as Assistant Agency Counselors.

(d) *Agency Employee Suitability Committee.* (1) The Agency Employee Suitability Committee shall continue to serve as a point of initial consideration concerning any matters of employee suitability that arise under Agency and/or other governmental regulations. In this position the Committee, as required, advises a Board Member, the Board, or the General Counsel concerning the appropriateness of action under such regulations. In addition the Committee is responsible for recommending to the Board and General Counsel, as necessary, guidelines to assure consistent and uniform application of the regulations in this part throughout the Agency.

(2) The Agency Employee Suitability Committee shall be composed of one member and alternate designated by the Board; one member and alternate designated by the General Counsel; and the Director, Division of Administration (who shall serve as Chairman) and as his alternate, the Assistant Director, Division of Administration.

(e) *Employees.* All new employees shall become familiar with the provisions of the regulations in this part during the period of orientation with the Agency. All employees are expected periodically to review the provisions included in this part and any subsequent regulations which may be issued.

§ 100.735–3 Advisory and interpretation service.

(a) The incumbents of the following named positions are Deputy Agency Counselors and shall make themselves thoroughly familiar with applicable laws, Executive orders, and regulations in this part:

(1) Regional Directors and respective Assistant General Counsels;

(2) All Washington Office, Branch, and Division Chiefs; and

(3) All persons officially acting in one of the above positions.

(b) Upon request of employees under their supervision, the above incumbents shall be available for necessary consultation and advice. In the consideration of any question or problem arising under the regulations in this part, the above officials or employees with questions or problems may avail themselves of the services of the Agency Counselor.

§ 100.735–4 Disciplinary and other remedial action.

(a) Violations of the regulations in this part by an employee may be cause for appropriate disciplinary or other action which may be in addition to any penalty prescribed by law.

(b) In any instance where a statement submitted under § 100.735–16 or Subpart C of this part or information from any other source indicates a conflict of interest, apparent or real, the employee shall be provided opportunity to explain.

(1) After consideration of the employee's explanation, the appropriate official (see designated officials under § 100.735–3(a)(1), (2), (3)) may recommend, in writing to the Chairman of the Board, the General Counsel, or a Board Member, as appropriate, that the interest is not so substantial as to be likely to affect the integrity of the employee's services to the Government and he must so notify the employee in advance of handing the assignment.

(2) If, however, the designated official deems the interest to be so substantial as to be a conflict or an apparent conflict with the employee's assignment, that official must act immediately to end the real or apparent conflict or to prevent a possible conflict by (i) disqualification for a particular assignment or (ii) arrangement by mutual agreement that the employee will divest himself of the interest before proceeding with the assignment. Any such action must also be reported with recommendations to the Chairman of the Board, the General Counsel, or a Board Member, as appropriate.

(3) If the designated official determines that further remedial action is necessary, he may recommend to the Chairman of the Board, the General Counsel, or a Board Member, as appropriate, that any of the following actions be taken—(i) Changes in assigned duties, (ii) arrangements for di-

vestment by the employee of his interest, or (iii) disciplinary action.

(c) Remedial action, whether disciplinary or otherwise, shall be effected in accordance with any applicable laws, Executive orders, and regulations (see NLRB Administrative Policies and Procedures Manual, Employee Appeals from Adverse Actions, Items 2430–2448 and employee's rights thereunder).

§ 100.735–5 Definitions.

In the regulations in this part:

(a) "Employee" means any officer or employee of the Agency but does not include a special Government employee.

(b) "Special Government employee" means an officer or employee of the Agency who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed one hundred and thirty (130) days during any period of three hundred and sixty-five (365) consecutive days, temporary duties either on a full-time or intermittent basis.

(c) "Person" means an individual, a labor organization, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

§ 100.735–6 Claims under the Federal Tort Claims Act for loss of or damage to property or for personal injury or death.

(a) *Filing of claims.* Pursuant to 28 U.S.C. 2672, any claim under the Federal Tort Claims Act for money damages for loss of or injury to property, or for personal injury or death, caused by the negligent or wrongful act or omission of any employee of the National Labor Relations Board while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant for such loss, injury or death in accordance with the law of the place where the act or omission occurred, may be presented to the Director of Administration, 1717 Pennsylvania Avenue NW., Washington, D.C. 20570, or to any regional office of the National Labor Relations Board, at any time within 2 years after such claim has accrued. Such a claim may be presented by a person specified in 28 CFR 14.3, in the manner set out in 28 CFR 14.2 and 14.3, and shall be accompanied by as much of the appropriate information specified in 28 CFR 14.4 as may reasonably be obtained.

(b) *Action on claims.* The Director, Division of Administration, shall have the power to consider, ascertain, adjust, determine, compromise, and settle any claim referred to in, and presented in accordance with paragraph (a) of this section. The Chief, Security and Safety, can process and adjust claims under $100 in accordance with delegated authority from the Director. legal review is required by the General Counsel or designee for all claims in the amount of $1,000 or more, 28 CFR 14.5. Any exercise of such power shall be in accordance with 28 U.S.C. 2672 and 28 CFR Part 14.

(c) *Payment of awards.* Any award, compromise, or settlement in an amount of $2,500 or less made pursuant to this sction will be paid by the Director of Administration out of appropriations available to the National labor Relations Board. Payment of any award, compromise, or settlement in an amount in excess of $2,500 made pursuant to this section will be obtained in accordance with 28 CFR 14.10.

[42 FR 59264, Nov. 16, 1977]

Subpart B—Conduct and Responsibilities of Employees

§ 100.735–11 General provisions.

All employees shall avoid any action whether or not specifically prohibited by this part which might result in or create the appearance of:

(a) Using public office for private gain;

(b) Giving preferential treatment to any person;

(c) Impending Government efficiency or economy;

(d) Losing complete independence or impartiality;

(e) Making a Government decision outside official channels; or

(f) Affecting adversely the confidence of the public in the integrity of the Government.

§ 100.735–12 Gifts, entertainment, and favors.

(a) Except as provided in paragraph (b) of this section (see also § 100.735–14 when travel or subsistence may be involved), an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person who:

(1) Is a party to or has an interest in any case, proceeding, or other matter before the Agency;

(2) Conducts operations or activities or is associated with any operation or activity that falls within the jurisdiction of the National Labor Relations Act, as amended;

(3) Has interests that may be substantially affected by the performance or nonperformance of the employee's duty; or

(4) Has, or is seeking to obtain, contractual or other business or financial relations with the Agency.

(b) Appropriate exceptions to the prohibitions in paragraph (a) of this section are as follows:

(1) Those gifts, gratuities, favors, etc., that are governed by obvious family relationships (such as those between parents, children, or spouse of the employee and the employee) or personal relationships when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors.

(2) Acceptance of food and refreshments of nominal value on infrequent occasions where, in the course of performing official functions, case handling matters continue through luncheon or dinner, or on other occasions when an employee is properly in attendance.

(3) Arrangement for loans from banks or other financial institutions granted on customary terms.

(4) Acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value.

(c) An employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself. However, this does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on an occasion such as marriage, illness, death, birth, or retirement.

(d) An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and in Public Law 89–673, 80 Stat. 952.

§ 100.735–13 Outside employment or occupations.

(a) *General provisions.* Employees shall not engage in outside employment or other outside activity incompatible with the full and proper discharge of the duties and responsibilities of their Government employment. Incompatible employment includes, but is not limited to:

(1) The private practice of law either individually or with another person; however, as an exception, permission of the Board or General Counsel may be requested to engage in such occasional and private legal activities as those involving family or civic matters;

(2) Acceptance of a fee (including forwarding or referral fees), compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of, a conflict of interest;

(3) Outside employment which tends to impair an employee's mental or physical capacity to perform his duties and responsibilities in an acceptable manner; or

(4) Outside employment which tends to limit an employee's availability for any required assignments including, but not limited to, travel, after-hours investigations, interviews, and elections.

(b) *Dual compensation.* An employee shall not receive any salary or anything of monetary value from a private source as compensation for his services to the Government.

(c) *Teaching, writing, and lecturing.* (1) Teaching, writing, and lecturing by

employees are outside activities which may be permitted so long as all requirements pertaining to conflicts of interest and outside employment (see especially paragraphs (a)(3) and (4) of this section) are observed. However, an employee shall not, either for or without compensation, engage in teaching, lecturing, or writing that is dependent on information obtained as a result of his Government employment, except when that information has been made available to the general public or will be made available on request, or when the Board or General Counsel gives written authorization for the use of nonpublic information on the basis that the use is in the public interest.

(2) No employee of the Agency shall instruct, either directly or indirectly, or be concerned in any manner with the instruction of any person or classes of persons with a view to their special preparation for an examination of the Civil Service Commission or the Boards of Examiners for the Foreign Services. Any request for exceptions shall be directed to the Agency Counselor.

(d) *Employment under State or local government.* An employee shall not engage in outside employment under a State or local government, except in those situations allowed by law, Executive order or Civil Service Commission regulation (5 CFR Part 734), and with the consent of the Board or General Counsel.

(e) *Requests for authorization and reports of outside employment*—(1) *Legal practice.* Requests directed to the Board or General Counsel, as appropriate, for exception to the prohibition in paragraph (a)(1) of this section, shall at a minimum, include:

(i) Nature of legal activity,

(ii) Relationship of proposed client(s) to employee, if any,

(iii) Expected duration of activity, and

(iv) Compensation involved.

(2) *Other employment.* Before any employee accepts outside employment, he shall obtain permission of his Regional Director, Branch Chief, or the equivalent. Permission shall be granted in accordance with the regulations in this part. Each Regional Director, Branch Chief, or the equivalent shall maintain a record on an individual basis of each request received for outside employment authorization and the official action taken. At least annually, as of June 30, the Division Chief shall require a report from each subordinate authorizing official showing as a minimum: (i) By named employee, the request and official action taken, and (ii) a list by employee of the outstanding authorizations for outside employment.

§ 100.735–14 Other outside activities.

The prohibition of § 100.735–13 shall not preclude an employee from:

(a) Receipt of bona fide reimbursement, unless prohibited by law, for actual expenses for travel and such other necessary subsistence as is compatible with the standards in this part, and for which no Government payment or reimbursement is made (since authority for payment of travel and subsistence to attend meetings is derived from the Government Employees Training Act, see Title 4, item 2022 of the NLRB Administrative Policies and Procedures Manual). However, this provision does not allow an employee to be reimbursed, or payment to be made on his behalf, for excessive personal living expenses, gifts, entertainment or other personal benefits, nor does it allow an employee to be reimbursed by a person for travel on official business under agency orders when reimbursement is proscribed by Decision B–128527 of the Comptroller General dated March 7, 1967;

(b) Participating in the activities of National or State political parties insofar as such participation is not proscribed by law;

(c) Participating in affairs of or accepting an award for a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational or recreational, public service, or civic organization; or

(d) Attending, participating in or speaking at special meetings conducted by labor or management organizations or associations thereof where the subject matter relates to the functions or specializations of the Agency; provided such attendance or participation

has been approved by the employee's respective Regional Director, Division Chief, or equivalent who is generally responsible for clearing such matters with the Board or General Counsel as appropriate.

§ 100.735–15 Special additional requirements for Presidential appointees.

Board Members and the General Counsel (a) shall not engage in any other business, vocation, or employment, and (b) shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs, or operations of the NLRB, or which draws substantially on official data or ideas which have not become part of the body of public information.

§ 100.735–16 Financial and other interests.

(a) *General provisions.* Under Title 18 of the United States Code entitled Crimes and Criminal Procedure, section 208, provisions of this section apply to all employees whether or not they are required to report under Subpart C of this part. Employees shall not have direct or indirect financial interests that conflict substantially or appear to conflict substantially with their duties and responsibilities as Federal employees or engage, directly or indirectly, in financial transactions as a result of, or primarily relying upon, information obtained through their employment and not available to the public. However, this section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government so long as it is not prohibited by law, Executive order, or the regulations in this part.

(b) *Limitations where financial or other interests are involved.* Except as permitted under paragraph (d) of this section, no employee shall participate in any case, proceeding, or other matter before the Agency whenever to his knowledge he, his spouse, minor child, or relative residing in his household is associated with, has a financial interest in, or is seeking employment with, any outside person who has a direct interest in such case, proceeding, or other matter.

(c) *Disclosures of financial or other interests.* Upon assignment of any case, proceeding, or other matter in which the employee has an interest as described in paragraph (b) of this section, the employees shall complete Form NLRB–4573 (revised) and forward it as follows:

(1) Employees under the General Counsel to their Regional Director, division, branch, or office chief or the equivalent,

(2) Employees on the staff of a Board Member to their respective Board Members or his designee,

(3) Washington Trial Examiners to the Chief Trial Examiner or his associates,

(4) San Francisco Trial Examiners to the Associate Chief Trial Examiner, San Francisco, and

(5) Other employees under the Board to their division, branch, or office chief.

In the absence of any of the above officials, the person officialy acting in the capacity of the absent official shall receive Form NLRB–4573 (revised).

(d) Action required. See § 100.735–4.

§ 100.735–17 Use of Government property.

An employee is prohibited from directly or indirectly using or allowing the use of Government property of any kind, including property leased to the Government, for other than officially approved activities. An employee has the positive duty to protect and conserve Government property, including equipment, supplies, and other property entrusted or issued to him.

§ 100.735–18 Misuse of information.

Except as permitted in § 100.735–13(c)(1), no employee may directly or indirectly use or allow the use of official information obtained through or in connection with his employment with the Agency which has not been made available to the general public, for the purpose of furthering any private interest.

§ 100.735–19 Indebtedness.

An employee shall pay each just financial obligation including those imposed by laws in a proper and timely manner. For the purpose of this section, a "just financial obligation" means one acknowledged by the employee or reduced to judgment by a court, and "in a proper and timely" manner means in a manner which the Agency determines does not, under the circumstances, reflect adversely on the Government as an employer. In the event of a dispute between an employee and an alleged creditor, this section does not require the Agency to determine the validity or amount of the disputed debt. Nevertheless, it is the employee's responsibility to make a reasonable effort to resolve the dispute in a timely manner.

§ 100.735–20 Gambling, betting, and lotteries.

An employee is prohibited from participating while on Government-owned or leased property or while on duty for the Government, in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket.

§ 100.735–21 General conduct prejudicial to the Government.

An employee is prohibited from engaging in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

§ 100.735–22 Miscellaneous statutory and nonstatutory provisions.

In order that each employee may acquaint himself with each statute and other provision that relates to his ethical and other conduct, the text of the following are reprinted in the appendix of the National Labor Relations Board Administrative Policies and Procedures Manual for review.

(a) House Concurrent Resolution 175, 85th Congress, 2d session, 72 Stat. B 12, the Code of Ethics for Government Service.

(b) The prohibition against bribery of public officials (18 U.S.C. 201).

(c) The prohibition against receiving compensation for claims, contracts, etc. (18 U.S.C. 203).

(d) The prohibition against prosecuting claims against and other matters affecting the Government (18 U.S.C. 205).

(e) The prohibition against prosecuting claims involving matters connected with former duties—disqualification of partners (18 U.S.C. 207).

(f) The prohibition against an interested person acting as a Government agent (18 U.S.C. 208).

(g) The prohibition against salaries or contributions from other than Government sources (18 U.S.C. 209).

(h) The prohibition against acceptance or solicitation to obtain public office (18 U.S.C. 211).

(i) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(j) The prohibition against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(k) The prohibition against employment of member of Communist organization (50 U.S.C. 784).

(l) The prohibition against disclosing of classified information (18 U.S.C. 798).

(m) The prohibition against disclosing of confidential information (18 U.S.C. 1905).

(n) The prohibition relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(o) The prohibition against the misuse of Government vehicles (31 U.S.C. 638a(c)).

(p) The prohibition against the misuse of franking privilege (18 U.S.C. 1719).

(q) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(r) The prohibition against fraud and false statement (18 U.S.C. 1001).

(s) The prohibition against mutiliating or destroying public records (18 U.S.C. 2071).

(t) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(u) The prohibition against embezzlement and theft of Government

money, property, or records (18 U.S.C. 641).

(v) The prohibition against failure to account for public money (18 U.S.C. 643).

(w) The prohibition against wrongfully converting property of another (18 U.S.C. 654).

(x) The prohibition against unauthorized use of documents relating to duties (18 U.S.C. 285).

(y) The prohibition against political activities in subchapter III of chapter 73 of title 5, United States Code.

(z) The prohibition against solicitation of political contributions (18 U.S.C. 602).

(aa) The prohibition against solicitation of political contributions in Federal buildings (18 U.S.C. 603).

(bb) The prohibition against making political contributions (18 U.S.C. 607).

(cc) The prohibition limiting political contributions and purchases (18 U.S.C. 608).

(dd) The prohibition against Board Members and the General Counsel engaging in any other business, vocation, or employment (L.M.R.A., 1947 as amended).

(ee) The prohibition of practice before the Board of former employees (Subpart L, secs. 102.119 and 102.120, NLRB Rules and Regulations, Series 8).

(ff) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

(gg) The prohibition against accepting or holding any position in the National Labor Relations Board by any individual convicted of a felony which involves inciting or participating in a riot or civil disorder for the 5 years immediately following the date upon which his conviction becomes final (5 U.S.C. 7313).

[32 FR 13560, Sept. 27, 1967, as amended at 28 FR 14095, May 29, 1973]

Subpart C—Statements of Employment and Financial Interests Required of Certain Employees

§ 100.735–31 General provisions.

Employees generally shall inform the Agency through the supervisory structure of any employment or financial interests that creates or may give the appearance of creating a conflict of interest with normal work assignments or with a specific assignment. (See § 100.735–16.) In addition, incumbents of positions listed in § 100.735–32(a) shall submit Form NLRB 4664 in the manner prescribed in that section.

§ 100.735–32 Who must report.

(a) Employees listed below shall submit Form NLRB–4664 directly to the Chairman, Board Members, General Counsel, Chief Trial Examiner (for Washington Trial Examiners), or Associate Chief Trial Examiner, San Francisco (for San Francisco Trial Examiners), as appropriate.

(1) Regional Directors.

(2) Officers-in-Charge of Subregions.

(3) Deputy Associate General Counsel, Division of Operations.

(4) Director, Office of Appeals.

(5) Chief, General Services Branch.

(6) Executive Assistant to the Director, Division of Administration.

(7) All employees at grade GS–16 and above.

(b) Any other employee who normally substitutes in periods of absence of those employees set forth in paragraph (a) of this section may elect to file for an advance determination under § 100.735–16 hereof, which is based upon Title 18 of the United States Code, entitled Crimes and Criminal Procedure, section 208.

(c) Employees may obtain a review of the Agency's decision that they file a statement of financial and other interests through the Agency grievance procedure. (See NLRB Administrative Policies and Procedures Manual, Title 6, item 2460.)

§ 100.735–33 Initial submission of employee statements.

Each employee designated in § 100.735–32(a) shall submit his initial "statement" no later than 90 days

after the effective date of this part if employed on or before that date. If a designated employee enters on duty after the effective date of this part, he shall report within 30 days after entrance on duty; however, no employee is required to report sooner than 90 days after the effective date.

§ 100.735–34 Annual requirements.

Changes in, or additions to, the information contained in an employee's statement of employment and financial interests shall be reported in a supplementary statement as of September 30, 1967, and as of June 30 each year thereafter, except when the Civil Service Commission authorizes a different date. If no changes or additions occur, a report to that effect shall be submitted. Notwithstanding the filing of the annual report required by this section, each employee shall at all times be guided by the provisions of this subpart and 18 U.S.C. 208, unless an advance review and determination has been made with respect to such interest.

§ 100.735–36 Interests.

For the purpose of this report, "interests" include, in addition to those of the employee:

(a) Interests of employee's relatives. The interest of a spouse, minor child, or other relative of an employee's immediate household is considered to be an interest of the employee.

(b) Interests not known by the employee. In circumstances where information regarding interests is not known to the employee but known to another person, such as, but not limited to holdings placed in trust, the employee shall request that other person to submit such information in his behalf.

§ 100.735–37 Information not required.

Employees need not submit in a statement of employment and financial interests or supplementary statement any information about the employee's connection with or interest in a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization not conducted as a business enterprise. For this purpose, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are considered business enterprises and are required to be included in an employee's statement of employment and financial interests.

§ 100.735–38 Confidentiality of employee's statements.

Individuals designated at § 100.735–32(a) to receive statements of employment and financial interests and as appropriate under § 100.735–2(c)(3) the Agency Counselor, shall review and retain each statement of employment and financial interests and each supplementary statement in confidence. Employees so designated shall not allow access to or allow information to be disclosed from such statements except to carry out the purposes of this part. The Agency is not permitted to disclose information from a statement except as the Chairman of the CSC or the Board and General Counsel may determine for good cause shown.

§ 100.735–39 Effect of employee's statement on other requirements.

The statements of employment and financial interests and supplementary statements required of employees are in addition to, and not in substitution for or in derogation of, any similar requirements imposed by law, order, or regulation.

Subpart D—Conduct and Responsibilities of Special Government Employees

§ 100.735–41 General provisions.

In addition to the requirements of this subpart, special Government employees are expected to adhere to the specified requirements of Subpart B, as follows: §§ 100.735–11, 100.735–12 (c) and (d), 100.735–14(d), 100.735–16 through 100.735–21.

§ 100.735–42 Use of employment.

A special Government employee of the National Labor Relations Board shall not use his employment for a purpose that is, or gives the appear-

ance of being, motivated by the desire for private gain for himself or another person, particularly one with whom he has family, business, or financial ties.

§ 100.735–43 Use of inside information.

A special Government employee of the National Labor Relations Board shall not use inside information obtained as a result of his employment with the Agency for private gain for himself or another person either by direct action on his part or by counsel, recommendation, or suggestion to another person, particularly one with whom he has family, business, or financial ties. "Inside Information" means information obtained under Agency or Government authority which has not become part of the body of public information. The above does not preclude the special Government employee from teaching, lecturing, or writing in a manner not inconsistent with the provisions of § 100.735–13.

§ 100.735–44 Coercion.

A special Government employee is prohibited from using his employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or another person, particularly one with whom he has family, business, or financial ties.

§ 100.735–45 Gifts, entertainment, and favors.

A special Government employee, while so employed or in connection with his employment, is prohibited from receiving or soliciting from a person having business at the Agency anything of value as a gift, gratuity, loan, entertainment, or favor for himself or another person, particularly one with whom he has family, business, or financial ties, except for situations clearly falling within the scope of § 100.735–12(b).

§ 100.735–46 Statement of employment and financial interests.

(a) In addition to the requirements of § 100.735–16, special Government employees are to submit Form NLRB 4664a, "Statement of Employment and Financial Interests for Special Government Employees," which shall show all other employment; and such financial interests which the Agency determines are relevant in light of the duties the special Government employee is to perform.

(b) The Agency may waive the requirement of paragraph (a) of this section for a special Government employee who is not a consultant or an expert when the Agency determines that the duties of the position held by a special Government employee are of such a nature and at such a level of responsibility that the submission of the statement by the incumbent is not necessary to protect the integrity of the Government. For the purpose of this paragraph, "consultant" and "expert" have the meanings given those terms by chapter 304 of the Federal Personnel Manual.

(c) The above statement must be submitted no later than the time of employment of the special Government employee. By the submission of supplementary statements, each special Government employee is required to keep his statement current throughout his employment with the Agency.

(d) The requirements of paragraph (a) of this section are waived for special Government employees occupying the position of Election Clerk (WAE) GS–5 and Election Examiner (WAE) GS–7 as the duties of those positions are of such a nature and such a level of responsibility that the submission of the statement is not necessary to protect the integrity of the Government.

§ 100.735–47 Miscellaneous statutory provisions.

Each special Government employee of the Agency has a positive duty to acquaint himself with each statute that relates to his ethical and other conduct. See all of § 100.735–22, Miscellaneous statutory and nonstatutory provisions (copies of various statutes, etc., included in this listing. are reprinted in the appendix to the National Labor Relations Board Administrative Policies and Procedures Manual), and especially:

(a) The prohibition against receiving compensation for claim, contracts, etc. (18 U.S.C. 203).

(b) The prohibition against prosecuting claims against and other matters affecting the Government (18 U.S.C. 205).

(c) The prohibition against prosecuting claims involving matters connected with former duties—disqualification of partners (18 U.S.C. 207).

(d) The prohibition against an interested person acting as a Government agent (18 U.S.C. 208).

PART 101—STATEMENTS OF PROCEDURE, SERIES 8

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AUTHORITY: 49 Stat. 449, 73 Stat. 519, 29 U.S.C. 151-168, 401 note.

SOURCE: 24 FR 9095, Nov. 7, 1959, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes affecting this part appear at 37 FR 21481, Oct. 12, 1972.

Subpart A—General Statement

§ 101.1 General statement.

By virtue of the authority vested in it by section 6 of the National Labor Relations Act, 49 Stat. 449, as amended, the National Labor Relations Board has issued and published simultaneously herewith its Rules and Regulations, Series 8, as amended. The following statements of the general course and method by which the Board's functions are channeled and determined are issued and published pursuant to 5 U.S.C. 552(a)(1)(B).

[33 FR 9819, July 9, 1968]

Subpart B—Unfair Labor Practice Cases Under Section 10 (a) to (i) of the Act and Telegraph Merger Act Cases

§ 101.2 Initiation of unfair labor practice cases.

The investigation of an alleged violation of the National Labor Relations Act is initiated by the filing of a charge, which must be in writing and signed, and must either be notarized or must contain a declaration by the person signing it, under the penalties of the Criminal Code, that its contents are true and correct to the best of his knowledge and belief. The charge is filed with the regional director for the region in which the alleged violations have occurred or are occurring. A blank form for filing such charge is supplied by the regional office upon request. The charge contains the name and address of the person against whom the charge is made and a statement of the facts constituting the alleged unfair labor practices.

§ 101.3 [Reserved]

§ 101.4 Investigation of charges.

When the charge is received in the regional office it is filed, docketed, and assigned a case number. The regional director may cause a copy of the charge to be served upon the person against whom the charge is made, but timely service of a copy of the charge within the meaning of the proviso to section 10(b) of the Act is the exclusive responsibility of the charging party and not of the general counsel or his agents. The regional director requests the person filing the charge to submit promptly evidence in its support. As part of the investigation hereinafter mentioned, the person against whom the charge is filed, hereinafter called the respondent, is asked to submit a statement of his position in respect to the allegations. The case is assigned to a member of the field staff for investigation, who interviews representatives of the parties and other persons who have knowledge as to the charges, as is deemed necessary. In the investigation and in all other stages of the proceedings, charges alleging violation of section 8(b)(4)(A), (B), and (C), charges alleging violation of section 8(b)(4)(D) in which it is deemed appropriate to seek injunctive relief under section (10)(l) of the Act, and charges alleging violations of section 8(b)(7) or 8(e) are given priority over all other cases in the office in which they are pending except cases of like character; and charges alleging violation of section 8(a)(3) or 8(b)(2) are given priority over all other cases except cases of like character and cases under section 10(l) of the Act. The regional director may in his discretion dispense with any portion of the investigation described in this section as appears necessary to him in consideration of such factors as the amount of time necessary to complete a full investigation, the nature of the proceeding, and the public interest. After investigation, the case may be disposed of through informal methods such as withdrawal, dismissal, and settlement; or, the case may necessitate formal methods of disposition. Some of the informal methods of handling

unfair labor practice cases will be stated first.

§ 101.5 Withdrawal of charges.

If investigation reveals that there has been no violation of the National Labor Relations Act or the evidence is insufficient to substantiate the charge, the regional director recommends withdrawal of the charge by the person who filed. The complainant may also, on its own initiative, request withdrawal. If the complainant accepts the recommendation of the director or requests withdrawal on its own initiative, the respondent is immediately notified of the withdrawal of the charge.

§ 101.6 Dismissal of charges and appeals to general counsel.

If the complainant refuses to withdraw the charge as recommended, the regional director dismisses the charge. The regional director thereupon informs the parties of his action, together with a simple statement of the grounds therefor, and the complainant of his right of appeal to the general counsel in Washington, D.C., within 10 days. If the complainant appeals to the general counsel, the entire file in the case is sent to Washington, D.C., where the case is fully reviewed by the general counsel with the assistance of his staff. Oral presentation of the appeal issues may be permitted a party on timely written request, in which event the other parties are notified and afforded a like opportunity at another appropriate time. Following such review, the general counsel may sustain the regional director's dismissal, stating the grounds of his affirmance, or may direct the regional director to take further action.

[32 FR 9547, July 1, 1967]

§ 101.7 Settlements.

Before any complaint is issued or other formal action taken, the regional director affords an opportunity to all parties for the submission and consideration of facts, argument, offers of settlement, or proposals of adjustment, except where time, the nature of the proceeding, and the public interest do not permit. Normally prehearing conferences are held, the principal purpose of which is to discuss and explore such submissions and proposals of adjustment. The regional office provides Board-prepared forms for such settlement agreements, as well as printed notices for posting by the respondent. These agreements, which are subject to the approval of the regional director, provide for an appeal to the general counsel, as described in § 101.6, by a complainant who will not join in a settlement or adjustment deemed adequate by the regional director. Proof of compliance is obtained by the regional director before the case is closed. If the respondent fails to perform his obligations under the informal agreement, the regional director may determine to institute formal proceedings.

§ 101.8 Complaints.

If the charge appears to have merit and efforts to dispose of it by informal adjustment are unsuccessful, the regional director institutes formal action by issuance of a complaint and notice of hearing. In certain types of cases, involving novel and complex issues, the regional director, at the discretion of the general counsel, must submit the case for advice from the general counsel before issuing complaint. The complaint, which is served on all parties, sets forth the facts upon which the Board bases its jurisdiction and the facts relating to the alleged violations of law by the respondent. The respondent must file an answer to the complaint within 10 days of its receipt, setting forth a statement of its defense.

§ 101.9 Settlement after issuance of complaint.

(a) Even though formal proceedings have begun, the parties again have full opportunity at every stage to dispose of the case by amicable adjustment and in compliance with the law. Thus, after the complaint has been issued and a hearing scheduled or even begun, the attorney in charge of the case and the regional director afford all parties every opportunity for the submission and consideration of facts, argument, offers of settlment, or pro-

posals of adjustment, except where time, the nature of the proceeding, and the public interest do not permit.

(b) (1) After the issuance of a complaint, the agency favors a formal settlement agreement, which is subject to the approval of the Board in Washington, D.C. In such an agreement, the parties agree to waive their right to hearing and agree further that the Board may issue an order requiring the respondent to take action appropriate to the terms of the settlement. Ordinarily the formal settlement agreement also contains the respondent's consent to the Board's application for the entry of a decree by the appropriate circuit court of appeals enforcing the Board's order.

(2) In some cases, however, the regional director, pursuant to his authority to withdraw the complaint before the hearing (§ 102.18 of this chapter), may conclude that an informal settlement agreement of the type described in § 101.7 is appropriate. Such an agreement is not subject to approval by the Board and does not provide for a Board order. It provides for the withdrawal of the complaint.

(c) (1) If after issuance of complaint but before opening of the hearing, the charging party will not join in a settlement tentatively agreed upon by the regional director, the respondent, and any other parties whose consent may be required, the regional director serves a copy of the proposed settlement agreement on the charging party with a brief written statement of the reasons for proposing its approval. Within 5 days after service of these documents, the charging party may file with the regional director a written statement of any objections to the proposed settlement. Such objections will be considered by the regional director in determining whether to approve the proposed settlement. If the settlement is approved by the regional director notwithstanding the objections, the charging party is so informed and provided a brief written statement of the reasons for the approval.

(2) If the settlement agreement approved by the regional director is a formal one, providing for the entry of a Board order, the settlement agreement together with the charging party's objections and the regional director's written statements, are submitted to Washington, D.C., where they are reviewed by the general counsel. If the general counsel decides to approve the settlement agreement, he shall so inform the charging party and submit the agreement and accompanying documents to the Board, upon whose approval the settlement is contingent. Within 7 days after service of notice of submission of the settlement agreement to the board, the charging party may file with the Board in Washington, D.C., a further statement in support of his objections to the settlement agreement.

(3) If the settlement agreement approved by the regional director is an informal one, providing for the withdrawal of the complaint, the charging party may appeal the regional director's action to the general counsel, as provided in § 102.19 of this chapter.

(d)(1) If the settlement occurs after the opening of the hearing and before issuance of the administrative law judge's decision and there is an all-party informal settlement, the request for withdrawal of the complaint must be submitted to the administrative law judge for his approval. If the all-party settlement is a formal one, final approval must come from the Board. If any party will not join in the settlement agreed to by the other parties, the administrative law judge will give such party an opportunity to state on the record or in writing its reasons for opposing the settlement.

(2) If the administrative law judge decides to accept or reject the proposed settlement, any party aggrieved by such ruling may ask for leave to appeal to the Board as provided in § 102.26 of this chapter.

(e)(1) In the event the respondent fails to comply with the terms of a settlement stipulation, upon which a Board order and court decree are based, the Board may petition the court to adjudge the respondent in contempt. If the respondent refuses to comply with the terms of a stipulation settlement providing solely for the entry of a Board Order, the Board may petition the court for enforcement of its order, pursuant to section

10 of the National Labor Relations Act.

(2) In the event the respondent fails to comply with the terms of an informal settlement agreement, the regional director may set the agreement aside and institute further proceedings.

[32 FR 9547, July 1, 1967, as amended at 32 FR 10059, July 8, 1967]

§ 101.10 Hearings.

(a) Except in extraordinary situations the hearing is open to the public and usually conducted in the region where the charge originated. A duly designated administrative law judge presides over the hearing. The Government's case is conducted by an attorney attached to the Board's regional office, who has the responsibility of presenting the evidence in support of the complaint. The rules of evidence applicable in the district courts of the United States under the Rules of Civil Procedure adopted by the Supreme Court are, so far as practicable, controlling. Counsel for the general counsel, all parties to the proceeding, and the administrative law judge have the power to call, examine, and cross-examine witnesses and to introduce evidence into the record. They may also submit briefs, engage in oral argument, and submit proposed findings and conclusions to the administrative law judge. The attendance and testimony of witnesses and the production of evidence material to any matter under investigation may be compelled by subpena.

(b) The functions of all administrative law judges and other Board agents or employees participating in decisions in conformity with section 8 of the Administrative Procedure Act are conducted in an impartial manner and any such administrative law judge, agent, or employee may at any time withdraw if he deems himself disqualified because of bias or prejudice. The Board's attorney has the burden of proof of violations of section 8 of the National Labor Relations Act and section 222(f) of the Telegraph Merger Act. In connection with the hearings subject to the provisions of section 7 of the Administrative Procedure Act:

(1) No sanction is imposed or rule or order issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the preponderance of the reliable probative, and substantial evidence;

(2) Every party has the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts; and

(3) Where any decision rests on official notice of a material fact not appearing in the evidence in the record, any party is on timely request afforded a reasonable opportunity to show the contrary.

(4) Subject to the approval of the administrative law judge, all parties to the proceeding voluntarily may enter into a stipulation dispensing with a verbatim written transcript of record of the oral testimony adduced at the hearing and providing for the waiver by the respective parties of their right to file with the Board exceptions to the findings of fact (but not to conclusions of law or recommended orders) which the administrative law judge shall make in his decision.

[24 FR 9095, Nov. 7, 1959, as amended at 37 FR 4911, Mar. 7, 1972]

§ 101.11 Administrative law judge's decision.

(a) At the conclusion of the hearing the administrative law judge prepares a decision stating findings of fact and conclusions, as well as the reasons for his determinations on all material issues, and making recommendations as to action which should be taken in the case. The administrative law judge may recommend dismissal or sustain the complaint, in whole or in part, and recommend that the respondent cease and desist from the unlawful acts found and take action to remedy their effects.

(b) The administrative law judge's decision is filed with the Board in Washington, D.C., and copies are simultaneously served on each of the parties. At the same time the Board, through its executive secretary, issues

and serves on each of the parties an order transferring the case to the Board. The parties may accept and comply with the administrative law judge's recommended order, which, in the absence of exceptions, shall become the order of the Board. Or, the parties or counsel for the Board may file exceptions to the administrative law judge's decision with the Board. Whenever any party files exceptions, any other party may file an answering brief limited to questions raised in the exceptions and/or may file cross-exceptions relating to any portion of the administrative law judge's decision. Cross-exceptions may be filed only by a party who has not previously filed exceptions. Whenever any party files cross-exceptions, any other party may file an answering brief to the cross-exceptions. The parties may request permission to appear and argue orally before the Board in Washington, D.C. They may also submit proposed findings and conclusions to the Board.

[28 FR 7972, Aug. 6, 1963, as amended at 34 FR 14431, Sept. 16, 1969]

§ 101.12 Board decision and order.

(a) If any party files exceptions to the administrative law judge's decision, the Board, with the assistance of the legal assistants to each Board member who function in much the same manner as law clerks do for judges, reviews the entire record, including the administrative law judge's decision and recommendations, the exceptions thereto, the complete transcript of evidence, and the exhibits, briefs, and arguments. The Board does not consult with members of the trial examining staff or with any agent of the general counsel in its deliberations. It then issues its decision and order in which it may adopt, modify, or reject the findings and recommendations of the administrative law judge. The decision and order contains detailed findings of fact, conclusions of law, and basic reasons for decision on all material issues raised, and an order either dismissing the complaint in whole or in part or requiring the respondent to cease and desist from its unlawful practices and to take appropriate affirmative action.

(b) If no exceptions are filed to the administrative law judge's decision, his decision and recommended order automatically become the decision and order of the Board, pursuant to section 10(c) of the Act. All objections and exceptions, whether or not previously made during or after the hearing, are deemed waived for all purposes.

[28 FR 7972, Aug. 6, 1963, as amended at 34 FR 14431, Sept. 16, 1969]

§ 101.13 Compliance with Board decision and order.

(a) Shortly after the Board's decision and order is issued the director of the regional office in which the charge was filed communicates with the respondent for the purpose of obtaining compliance. Conferences may be held to arrange the details necessary for compliance with the terms of the order.

(b) If the respondent effects full compliance with the terms of the order, the regional director submits a report to that effect to Washington, D.C., after which the case may be closed. Despite compliance, however, the Board's order is a continuing one; therefore, the closing of a case on compliance is necessarily conditioned upon the continued observance of that order; and in some cases it is deemed desirable, notwithstanding compliance, to implement the order with an enforcing decree. Subsequent violations of the order may become the basis of further proceedings.

§ 101.14 Judicial review of Board decision and order.

If the respondent does not comply with the Board's order, or the Board deems it desirable to implement the order with a court decree, the Board may petition the appropriate Federal court for enforcement. Or, the respondent may petition the circuit court of appeals to review and set aside the Board's order. Upon such review or enforcement proceedings, the court reviews the record and the Board's findings and order and sustains them if they are in accordance with the requirements of law. The court may enforce, modify, or set aside

in whole or in part the Board's findings and order, or it may remand the case to the Board for further proceedings as directed by the court. Following the court's decree, either the Government or the private party may petition the Supreme Court for review upon writ of certiorari. Such applications for review to the Supreme Court are handled by the Board through the Solicitor General of the United States.

§ 101.15 Compliance with court decree.

After a Board order has been enforced by a court decree, the Board has the responsibility of obtaining compliance with that decree. Investigation is made by the regional office of the respondent's efforts to comply. If it finds that the respondent has failed to live up to the terms of the court's decree, the general counsel may, on behalf of the Board, petition the court to hold him in contempt of court. The court may order immediate remedial action and impose sanctions and penalties.

§ 101.16 Back-pay proceedings.

(a) After a Board order directing the payment of back pay has been issued or after enforcement of such order by a court decree, if informal efforts to dispose of the matter prove unsuccessful, the regional director is then authorized at his discretion to issue a "back-pay specification" in the name of the Board and a notice of hearing before a trial examiner, both of which are served on the parties involved. The specification sets forth computations showing gross and net back pay due and any other pertinent information. The respondent must file an answer within 15 days of the receipt of the specification, setting forth a particularized statement of its defense.

(b) In the alternative and at his discretion, the regional director, under the circumstances specified above, may issue and serve upon the parties a notice of hearing only, without a specification. Such notice contains, in addition to the time and place of hearing before a trial examiner, a brief statement of the matters in controversy.

(c) The procedure before the trial examiner or the Board, whether initiated by the "back-pay specification" or by notice of hearing without a back-pay specification, is substantially the same as that described in §§ 101.10 to 101.14, inclusive.

[27 FR 2092, Mar. 3, 1962]

Subpart C—Representation Cases Under Section 9(c) of the Act and Petitions for Clarification of Bargaining Units and for Amendment of Certifications Under Section 9(b) of the Act

§ 101.17 Initiation of representation cases and petitions for clarification and amendment.

The investigation of the question as to whether a union represents a majority of an appropriate grouping of employees is initiated by the filing of a petition by any person or labor organization acting on behalf of a substantial number of employees or by an employer when one or more individuals or labor organizations present to him a claim to be recognized as the exclusive bargaining representative. If there is a certified or currently recognized representative, any employee, or group of employees, or any individual or labor organization acting in their behalf may also file decertification proceedings to test the question of whether the certified or recognized agent is still the representative of the employees. If there is a certified or currently recognized representative of a bargaining unit and there is no question concerning representation, a party may file a petition for clarification of the bargaining unit. If there is a unit covered by a certification and there is no question concerning representation, any party may file a petition for amendment to reflect changed circumstances, such as changes in the name or affiliation of the labor organization involved or in the name or location of the employer involved. The petition must be in writing and signed, and either must be notarized or must contain a declaration by the person signing it, under the penalties of the Criminal Code, that its contents are true and correct to the best of his knowledge and belief. It is filed with the regional director for the region in

which the proposed or actual bargaining unit exists. Petition forms, which are supplied by the regional office upon request, provide, among other things, for a description of the contemplated or existing appropriate bargaining unit, the approximate number of employees involved, and the names of all labor organizations which claim to represent the employees. If a petition is filed by a labor organization seeking certification, or in the case of a petition to decertify a certified or recognized bargaining agent, the petitioner must supply, within 48 hours after filing but in no event later than the last day on which the petition might timely be filed, evidence of representation. Such evidence is usually in the form of cards, which must be dated, authorizing the labor organization to represent the employees or authorizing the petitioner to file a decertification proceeding. If a petition is filed by an employer, the petitioner must supply, within 48 hours after filing, proof of demand for recognition by the labor organization named in the petition and, in the event the labor organization named is the incumbent representative of the unit involved, a statement of the objective considerations demonstrating reasonable grounds for believing that the labor organization has lost its majority status.

[32 FR 9548, July 1, 1967]

§ 101.18 Investigation of petition.

(a) Upon receipt of the petition in the regional office, it is docketed and assigned to a member of the staff, usually a field examiner, for investigation. He conducts an investigation to ascertain (1) whether the employer's operations affect commerce within the meaning of the Act, (2) the appropriateness of the unit of employees for the purposes of collective bargaining and the existence of a bona fide question concerning representation within the meaning of the Act, (3) whether the election would effectuate the policies of the Act and reflect the free choice of employees in the appropriate unit, and (4) whether, if the petitioner is a labor organization seeking recognition, there is a sufficient probability, based on the evidence of representation of the petitioner, that the employees have selected it to represent them. The evidence of representation submitted by the petitioning labor organization or by the person seeking decertification is ordinarily checked to determine the number or proportion of employees who have designated the petitioner, it being the Board's administrative experience that in the absence of special factors the conduct of an election serves no purpose under the statute unless the petitioner has been designated by at least 30 percent of the employees. However, in the case of a petition by an employer, no proof of representation on the part of the labor organization claiming a majority is required and the regional director proceeds with the case if other factors require it unless the labor organization withdraws its claim to majority representation. The field examiner, or other member of the staff, attempts to ascertain from all interested parties whether or not the grouping or unit of employees described in the petition constitutes an appropriate bargaining unit. The petition may be amended at any time prior to hearing and may be amended during the hearing in the discretion of the hearing officer upon such terms as he deems just.

(b) The petitioner may on its own initiative request the withdrawal of the petition if the investigation discloses that no question of representation exists within the meaning of the statute, because, among other possible reasons, the unit is not appropriate, or a written contract precludes further investigation at that time, or where the petitioner is a labor organization or a person seeking decertification and the showing of representation among the employees is insufficient to warrant an election under the 30-percent principle stated in paragraph (a) of this section.

(c) For the same or similar reasons the regional director may request the petitioner to withdraw its petition. If the petitioner, despite the regional director's recommendations, refuses to withdraw the petition, the regional director then dismisses the petition, stating the grounds for his dismissal and informing the petitioner of his right of appeal to the Board in Wash-

ington, D.C. The petition may also be dismissed in the discretion of the regional director if the petitioner fails to make available necessary facts which are in its possession. The petitioner may within 10 days appeal from the regional director's dismissal by filing such request with the Board in Washington, D.C., after a full review of the file with the assistance of its staff, the Board may sustain the dismissal, stating the grounds of its affirmance, or may direct the regional director to take further action.

[24 FR 9095, Nov. 7, 1959, as amended at 32 FR 9548, July 1, 1967]

§ 101.19 Consent adjustments before formal hearing.

The Board has devised and makes available to the parties two types of informal consent procedures through which representation issues can be resolved without recourse to formal procedures. These informal arrangements are commonly referred to as consent-election agreement, followed by regional director's determination, and consent-election agreement, followed by Board certification. Forms for use in these informal procedures are available in the regional offices.

(a)(1) The consent-election agreement followed by the regional director's determination of representatives is the most frequently used method of informal adjustment of representation cases. The terms of the agreement providing for this form of adjustment are set forth in printed forms, which are available upon request at the Board's regional offices. Under these terms the parties agree with respect to the appropriate unit, the payroll period to be used as the basis of eligibility to vote in an election, and the place, date, and hours of balloting. A Board agent arranges the details incident to the mechanics and conduct of the election. For example, he usually arranges preelection conferences in which the parties check the list of voters and attempt to resolve any questions of eligibility. Also, prior to the date of election, the holding of such election shall be adequately publicized by the posting of official notices in the establishment whenever possible or in other places, or by the use of other means considered appropriate and effective. These notices reproduce a sample ballot and outline such election details as location of polls, time of voting, and eligibility rules.

(2) The actual polling is always conducted and supervised by Board agents. Appropriate representatives of each party may assist them and observe the election. As to the mechanics of the election, a ballot is given to each eligible voter by the Board's agents. The ballots are marked in the secrecy of a voting booth. The Board agents and authorized observers have the privilege of challenging for reasonable cause employees who apply for ballots.

(3) Customarily the Board agents, in the presence and with the assistance of the authorized observers, count and tabulate the ballots immediately after the closing of the polls. A complete tally of the ballots is served upon the parties upon the conclusion of the count.

(4) If challenged ballots are sufficient in number to affect the results of the count, the regional director conducts an investigation and rules on the challenges. Similarly, if objections to the conduct of the election are filed within 5 days of the issuance of the tally of ballots, the regional director likewise conducts an investigation and rules upon the objections. If, after investigation, the objections are found to have merit, the regional director may void the election results and conduct a new election.

(5) This form of agreement provides that the rulings of the regional director on all questions relating to the election (for example, eligibility to vote and the validity of challenges and objections) are final and binding. Also, the agreement provides for the conduct of a runoff election, in accordance with the provisions of the Board's Rules and Regulations, if two or more labor organizations appear on the ballot and no one choice receives the majority of the valid votes cast.

(6) The regional director issues to the parties a certification of the results of the election, including certification of representatives where appro-

priate, with the same force and effect as if issued by the Board.

(b) The consent-election agreement followed by a Board determination provides that disputed matters following the agreed-upon election, if determinative of the results, shall be the basis of a formal decision by the Board instead of an informal determination by the regional director, except that if the regional director decides that a hearing on objections or challenged ballots is necessary he may direct such a hearing before a hearing officer, or, if the case is consolidated with an unfair labor practice proceeding, before a trial examiner. If a hearing is directed such action on the part of the regional director constitutes a transfer of the case to the Board. Thus, except for directing a hearing, it is provided that the Board, rather than the regional director, makes the final determination of questionas raised concerning eligibility, challenged votes, and objections to the conduct of the election. Thus, if challenged ballots are sufficient in number to affect the results of the count, the regional director conducts an investigation and issues a report on the challenges instead of ruling thereon, unless he elects to hold a hearing. Similarly, if objections to the conduct of the election are filed within 5 days after issuance of the tally of ballots, the regional director likewise conducts an investigation and issues a report instead of ruling on the validity of the objections, unless he elects to hold a hearing. The regional director's report is served on the parties, who may file exceptions thereto within 10 days with the Board in Washington, D.C. The Board then reviews the entire record made and may, if a substantial issue is raised, direct a hearing on the challenged ballots or the objections to the conduct of the election. Or, the Board may, if no substantial issues are raised, affirm the regional director's report and take appropriate action in termination of the proceedings. If a hearing is ordered by the regional director or the Board on the challenged ballots or objections, all parties are heard and a report containing findings of fact and recommendations as to the disposition of the challenges or objections, or both, and resolving issues of credibility is issued by the hearing officer and served on the parties, who may file exceptions thereto within 10 days with the Board in Washington, D.C. The record made on the hearing is reviewed by the Board with the assistance of its legal assistants and a final determination made thereon. If the objections are found to have merit, the election results may be voided and a new election conducted under the supervision of the regional director. If the union has been selected as the representative, the Board or the regional director, as the case may be, issues its certification, and the proceeding is terminated. If upon a decertification or employer petition the union loses the election, the Board or the regional director, as the case may be, certifies that the union is not the chosen representative.

[24 FR 9095, Nov. 7, 1959, as amended at 31 FR 10030, July 23, 1966]

§ 101.20 Formal hearing.

(a) If no informal adjustment of the question concerning representation has been effected and it appears to the regional director that formal action is necessary, the regional director will institute formal proceedings by issuance of a notice of hearing on the issues, which is followed by a decision and direction of election or dismissal of the case. In certain types of cases, involving novel or complex issues, the regional director may submit the case for advice to the Board before issuing notice of hearing.

(b) The notice of hearing, together with a copy of the petition, is served upon the unions and employer filing or named in the petition and upon other known persons or labor organizations claiming to have been designated by employees involved in the proceeding.

(c) The hearing, usually open to the public, is held before a hearing officer who normally is an attorney or field examiner attached to the regional office but may be another qualified official. The hearing, which is nonadversary in character, is part of the investigation in which the primary interest of the Board's agents is to insure that

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the record contains as full a statement of the pertinent facts as may be necessary for determination of the case. The parties are afforded full opportunity to present their respective positions and to produce the significant facts in support of their contentions. In most cases a substantial number of the relevant facts are undisputed and stipulated. The parties are permitted to argue orally on the record before the hearing officer.

[26 FR 3885, May 4, 1961]

§ 101.21 Procedure after hearing.

(a) Pursuant to section 3(b) of the Act, the Board has delegated to its regional directors its powers under section 9 of the Act, to determine the unit appropriate for the purpose of collective bargaining, to investigate and provide for hearings, and determine whether a question of representation exists, and to direct an election or take a secret ballot under subsection (c) or (e) of section 9 and certify the results thereof. These powers include the issuance of such decisions, orders, rulings, directions, and certifications as are necessary to process any representation or deauthorization petition. Thus, by way of illustration and not of limitation, the regional director may dispose of petitions by administrative dismissal or by decision after formal hearing; pass upon rulings made at hearings and requests for extensions of time for filing of briefs; rule on objections to elections and challenged ballots in connection with elections directed by the regional director or the Board, after administrative investigation or formal hearing; rule on motions to amend or rescind any certification issued after the effective date of the delegation; and entertain motions for oral argument. The regional director may at any time transfer the case to the Board for decision, but until such action is taken, it will be presumed that the regional director will decide the case. In the event the regional director decides the issues in a case, his decision is final subject to the review procedure set forth in the Board's rules and regulations.

(b) Upon the close of the hearing, the entire record in the case is forwarded to the regional director or, upon issuance by the regional director or of an order transferring the case, to the Board in Washington, D.C. The hearing officer also transmits an analysis of the issues and the evidence, but makes no recommendations in regard to resolution of the issues. All parties may file briefs with the regional director or, if the case is transferred to the Board at the close of the hearing, with the Board, within 7 days after the close of the hearing. If the case is transferred to the Board after the close of the hearing, briefs may be filed with the Board within the time prescribed by the regional director. The parties may also request to be heard orally. Because of the nature of the proceedings, however, permission to argue orally is rarely granted. After review of the entire case, the regional director or the Board, issues a decision either dismissing the petition or directing that an election be held. In the latter event, the election is conducted under the supervision of the regional director in the manner already described in § 101.19.

(c) With respect to objections to the conduct of the election and challenged ballots, the regional director may, in his discretion, (1) issue a report on such objections and/or challenged ballots and transmit the issues to the Board for resolution, as in cases involving consent elections to be followed by Board certifications, or (2) decide the issues on the basis of the administrative investigation or after a hearing, with the right to transfer the case to the Board for decision at any time prior to his disposition of the issues on the merits. In the event the regional director adopts the first procedures, the parties have the same rights, and the same procedure is followed, as has already been described in connection with the post election procedures in cases involving consent election to be followed by Board certification. In the event the regional director adopts the second procedure, the parties have the same rights, and the same procedure is followed, as has already been described in connection with hearings before elections.

(d) The parties have the right to request review of any final decision of

the regional director, within the times set forth in the Board's rules and regulations, on one or more of the grounds specified therein. Any such request for review must be a self-contained document permitting the Board to rule on the basis of its contents without the necessity of recourse to the record, and must meet the other requirements of the Board's rules and regulations as to its contents. The regional director's action is not stayed by the filing of such a request or the granting of review, unless otherwise ordered by the Board. Thus, the regional director may proceed immediately to make any necessary arrangements for an election, including the issuance of a notice of election. However, unless a waiver is filed, he will normally not schedule an election until a date between the 20th and 30th days after the date of his decision, to permit the Board to rule on any request for review which may be filed. As to administrative dismissals prior to the close of hearing, see § 101.18(c).

(e) If the election involves two or more labor organizations and if the election results are inconclusive because no choice on the ballot received the majority of valid votes cast, a runoff election is held as provided in the Board's rules and regulations.

[26 FR 3886, May 4, 1961]

Subpart D—Unfair Labor Practice and Representation Cases Under Sections 8(b)(7) and 9(c) of the Act

§ 101.22 Initiation and investigation of a case under section 8(b)(7).

(a) The investigation of an alleged violation of section 8(b)(7) of the Act is initiated by the filing of a charge. The manner of filing such charge and the contents thereof are the same as described in § 101.2. In some cases, at the time of the investigation of the charge, there may be pending a representation, petition involving the employees of the employer named in the charge. In those cases, the results of the investigation of the charge will determine the course of the petition.

(b) The investigation of the charge is conducted in accordance with the provisions of § 101.4, insofar as they are applicable. If the investigation reveals that there is merit in the charge, a complaint is issued as described in § 101.8, and an application is made for an injunction under section 10(l) of the Act, as described in § 101.37. If the investigation reveals that there is no merit in the charge, the regional director, absent a withdrawal of the charge, dismisses it, subject to appeal to the general counsel. However, if the investigation reveals that issuance of a complaint may be warranted but for the pendency of a representation petition involving the employees of the employer named in the charge, action on the charge is suspended pending the investigation of the petition as provided in § 101.23.

§ 101.23 Initiation and investigation of a petition in connection with a case under section 8(b)(7).

(a) A representation petition [1] involving the employees of the employer named in the charge is handled under an expedited procedure when the investigation of the charge has revealed that: (1) The employer's operations affect commerce within the meaning of the Act; (2) picketing of the employer is being conducted for an object proscribed by section 8(b)(7) of the Act; (3) subparagraph (C) of that section is applicable to the picketing; and (4) the petition has been filed within a reasonable period of time not to exceed 30 days from the commencement of the picketing. In these circumstances, the member of the regional director's staff, to whom the matter has been assigned, investigates the petition to ascertain further: (1) The unit appropriate for collective bargaining; and (2) whether an election in that unit would effectuate the policies of the Act.

(b) If, based, on such investigation, the regional director determines that an election is warranted, he may, without a prior hearing, direct that an

[1] The manner of filing of such petition and the contents thereof are the same as described in § 101.17, except that the petitioner is not required to allege that a claim was made upon the employer for recognition or that the union represents a substantial number of employees.

election be held in an appropriate unit of employees. Any party aggrieved may file a request with the Board for special permission to appeal that action to the Board, but such review, if granted, will not, unless otherwise ordered by the Board, stay the proceeding. If the regional director determines that an election is not warranted, he dismisses the petition or makes other disposition of the matter. Should he conclude that an election is warranted, he fixes the basis of eligibility of voters and the place, date, and hours of balloting. The mechanics of arranging the balloting, the other procedures for the conduct of the election, and the postelection proceedings are the same, insofar as appropriate, as those described in § 101.19, except that the regional director's rulings on any objections to the conduct of the election or challenged ballots are final and binding, unless the Board, on an application by one of the parties, grants such party special permission to appeal from the regional director's rulings. The party requesting such review by the Board must do so promptly, in writing, and state briefly the grounds relied upon. Such party must also immediately serve a copy on each of the other parties, including the regional director. Neither the request for review by the Board nor the Board's grant of such review operates as a stay of any action taken by the regional director, unless specifically so ordered by the Board. If the Board grants permission to appeal, and it appears to the Board that substantial and material factual issues have been presented with respect to the objections to the conduct of the election or challenged ballots, it may order that a hearing be held on such issues or take other appropriate action.

(c) If the regional director believes, after preliminary investigation of the petition, that there are substantial issues which require determination before an election may be held, he may order a hearing on the issues. This hearing is followed by regional director or Board decision and direction of election, or other disposition. The procedures to be used in connection with such hearing and posthearing proceedings are the same, insofar as they are applicable, as those described in §§ 101.20 and 101.21, except that the parties may not file briefs with the regional director or the Board, unless special permission therefor is granted, but may state their respective legal positions fully on the record at the hearing, and except that any request for review must be filed promptly after issuance of the regional director's decision.

(d) Should the parties so desire, they may, with the approval of the regional director, resolve the issues as to the unit, the conduct of the balloting, and related matters pursuant to informal consent procedures, as described in § 101.19(a).

(e) If a petition has been filed which does not meet the requirements for processing under the expedited procedure, the regional director may process it under the procedures set forth in Subpart C of this part.

[24 FR 9095, Nov. 7, 1959, as amended at 26 FR 3886, May 4, 1961]

§ 101.24 Final disposition of a charge which has been held pending investigation of the petition.

(a) Upon the determination that the issuance of a direction of election is warranted on the petition, the regional director, absent withdrawal of the charge dismisses it subject to an appeal to the general counsel in Washington, D.C.

(b) If, however, the petition is dismissed or withdrawn, the investigation of the charge is resumed, and the appropriate steps described in § 101.22 are taken with respect to it.

§ 101.25 Appeal from the dismissal of a petition, or from the refusal to process it under the expedited procedure.

If the regional director determines after his investigation of the representation petition that further proceedings based thereon are not warranted, he, absent withdrawal of the petition, dismisses it, stating the grounds therefor. If the regional director determines that the petition does not meet the requirements for processing under the expedited procedure, he advises the petitioner of his determination to process the petition under the proce-

dures described in Subpart C of this part. In either event, the regional director informs all the parties of his action, and such action is final, although the Board may grant an aggrieved party permission to appeal from the regional director's action. Such party must request such review promptly, in writing, and state briefly the grounds relied upon. Such party must also immediately serve a copy on each of the other parties, including the regional director. Neither the request for review by the Board, not the Board's grant of such review, operates as a stay of the action taken by the regional director, unless specifically so ordered by the Board.

Subpart E—Referendum Cases Under Section 9(e)(1) and (2) of the Act

§ 101.26 Initiation of rescission of authority cases.

The investigation of the question as to whether the authority of a labor organization to make an agreement requiring membership in a labor organization as a condition of employment is to be rescinded is initiated by the filing of a petition by an employee or group of employees on behalf of 30 percent or more of the employees in a bargaining unit covered by an agreement between their employer and a labor organization requiring membership in such labor organization. The petition must be in writing and signed, and either must be notarized or must contain a declaration by the person signing it, under the penalties of the Criminal Code, that its contents are true and correct to the best of his knowledge and belief. It is filed with the regional director for the region in which the alleged appropriate bargaining unit exists or, if the bargaining unit exists in two or more regions, with the regional director for any such regions. The blank form, which is supplied by the regional office upon request, provides, among other things, for a description of the bargaining unit covered by the agreement, the approximate number of employees involved, and the names of any other labor organizations which claim to represent the employees. Petitioner must supply with the petition, or within 48 hours after filing, its evidence of authorization from the employees.

§ 101.27 Investigation of petition; withdrawals and dismissals.

(a) Upon receipt of the petition in the regional office, it is filed, docketed, and assigned to a member of the staff, usually a field examiner, for investigation. He conducts an investigation to ascertain (1) whether the employer's operations affect commerce within the meaning of the Act, (2) whether there is in effect an agreement requiring as a condition of employment membership in a labor organization, (3) whether petitioner has been authorized by at least 30 percent of the employees to file such a petition, and (4) whether an election would effectuate the policies of the act by providing for a free expression of choice by the employees. The evidence of designation submitted by petitioner, usually in the form of cards signed by individual employees authorizing the filing of such a petition, is checked to determine the proportion of employees who desire recision.

(b) Petitioner may on its own initiative request the withdrawal of the petition if the investigation discloses that an election is inappropriate, because, among other possible reasons, petitioner's cardshowing is insufficient to meet the 30-percent statutory requirement referred to in paragraph (a) of this section.

(c) For the same or similar reasons the regional director may request the petitioner to withdraw its petition. If petitioner, despite the regional director's recommendation, refuses to withdraw the petition, the regional director then dismisses the petition, stating the grounds for his dismissal and informing petitioner of his right of appeal to the Board in Washington, D.C. The petitioner may within 10 days appeal from the regional director's dismissal by filing such request with the Board in Washington, D.C. The request shall contain a complete statement setting forth the facts and reasons upon which the request is made. After a full review of the file,

the Board, with the assistance of its staff, may sustain the dismissal, stating the grounds for its affirmance, or may direct the regional director to take further action.

§ 101.28 Consent agreements providing for election.

The Board makes available to the parties two types of informal consent procedures through which authorization issues can be resolved without resort to formal procedures. These informal agreements are commonly referred to as (a) consent-election agreement, followed by regional director's determination, and (b) consent-election agreement, followed by Board certification. Forms for use in there informal procedures are available in regional offices. The procedures to be used in connection with a consent-election agreement providing for regional director's determination and a consent-election agreement providing for Board certification are the same as those already described in subpart C of the Statements of Procedure in connection with similar agreements in representation cases under section 9(c) of the Act, except that no provision is made for runoff elections.

[24 FR 9095, Nov. 7, 1959, as amended at 26 FR 3886, May 4, 1961]

§ 101.29 Procedure respecting election conducted without hearing.

If the regional director determines that the case is an appropriate one for election without formal hearing, an election is conducted as quickly as possible among the employees and upon the conclusion of the election the regional director furnishes to the parties a tally of the ballots. The parties, however, have an opportunity to make appropriate challenges and objections to the conduct of the election and they have the same rights, and the same procedure is followed, with respect to objections to the conduct of the election and challenged ballots, as has already been described in Subpart C of the Statements of Procedure in connection with the postelection procedures in representation cases under section 9(c) of the Act, except that no provision is made for a runoff election. If no such objections are filed within 5 days and if the challenged ballots are insufficient in number to affect the results of the election, the regional director issues to the parties a certification of the results of the election, with the same force and effect as if issued by the Board.

§ 101.30 Formal hearing and procedure respecting election conducted after hearing.

(a) The procedures are the same as those described in Subpart C of the Statements of Procedure respecting representation cases arising under section 9(c) of the Act. If the preliminary investigation indicates that they are substantial issues which require determination before an appropriate election may be held, the regional director will institute formal proceedings by issuance of a notice of hearing on the issues which, after hearing, is followed by regional director of Board decision and direction of election or dismissal. The notice of hearing together with a copy of the petition is served upon petitioner, the employer, and upon any other known persons or labor organizations claiming to have been designated by employees involved in the proceeding.

(b) The hearing, usually open to the public, is held before a hearing officer who normally is an attorney or field examiner attached to the regional office but may be another qualified official. The hearing, which is nonadversary in character, is part of the investigation in which the primary interest of the Board's agents is to insure that the record contains as full a statement of the pertinent facts as may be necessary for determination of the case. The parties are afforded full opportunity to present their respective positions and to produce the significant facts in support of their contentions. In most cases a substantial number of the relevant facts are undisputed and stipulated. The parties are permitted to argue orally on the record before the hearing officer.

(c) Upon the close of the hearing, the entire record in the case is then forwarded to the regional director or the Board, together with an informal analysis by the hearing officer of the

issues and the evidence but without recommendations. All parties may file briefs with the regional director or the Board within 7 days after the close of the hearing. If the case is transferred to the Board after the close of the hearing, briefs may be filed with the Board within the time prescribed by the regional director. The parties may also request to be heard orally. Because of the nature of the proceeding, however, permission to argue orally is rarely granted. After review of the entire case, the regional director or the Board issues a decision either dismissing the petition or directing that an election be held. In the latter event, the election if conducted under the supervision of the regional director in the manner already described in § 101.19.

(d) The parties have the same rights, and the same procedure is followed, with respect to objections to the conduct of the election and challenged ballots as has already been described in connection with the postelection procedures in representations cases under section 9(c) of the Act.

[26 FR 3886, May 4, 1961]

Subpart F—Jurisdictional Dispute Cases Under Section 10(k) of the Act

§ 101.31 Initiation of proceedings to hear and determine jurisdictional disputes under section 10(k).

The investigation of a jurisdictional dispute under section 10(k) is initiated by the filing of a charge, as described in § 101.2, by any person alleging a violation of paragraph (4)(D) of section 8(b). As soon as possible after a charge has been filed, the regional director serves upon the parties a copy of the charge together with a notice of the filing of such charge.

[26 FR 7546, Aug. 15, 1961]

§ 101.32 Investigation of charges; withdrawal of charges; dismissal of charges and appeals to Board.

These matters are handled as described in §§ 101.4 to 101.7, inclusive. Cases involving violation of paragraph (4)(D) of section 8(b) in which it is deemed appropriate to seek injunctive relief of a district court pursuant to section 10(1) of the Act, are given priority over all other cases in the office except other cases under section 10(1) of the Act and cases of like character.

§ 101.33 Initiation of formal action; settlement.

If, after investigation, it appears to the regional director that the Board should determine the dispute under section 10(k) of the Act, he issues a notice of hearing which includes a simple statement of issues involved in the jurisdictional dispute and which is served on all parties to the dispute out of which the unfair labor practice is alleged to have arisen. The hearing is scheduled for not less than 10 days after service of the notice of the filing of the charge, except that in cases involving the national defense, agreement will be sought for scheduling of hearing on less notice. If the parties present to the regional director satisfactory evidence that they have adjusted the dispute, the regional director withdraws the notice of hearing and either permits the withdrawal of the charge or dismisses the charge. If the parties submit to the regional director satisfactory evidence that they have agreed upon methods for the voluntary adjustment of the dispute, the regional director shall defer action upon the charge and shall withdraw the notice of hearing if issued. The parties may agree on an arbitrator, a proceeding under section 9(c) of the Act, or any other satisfactory method to resolve the dispute. If the agreed-upon method for voluntary adjustment results in a determination that employees represented by a charged union are entitled to perform the work in dispute, the regional director dismisses the charge against that union irrespective of whether the employer complies with that determination.

[36 FR 9132, May 20, 1971]

§ 101.34 Hearing.

If the parties have not adjusted the dispute or agreed upon methods of voluntary adjustment, a hearing, usually open to the public, is held before a hearing officer. The hearing is nonadversary in character, and the pri-

mary interest of the hearing officer is to insure that the record contains as full a statement of the pertinent facts as may be necessary for a determination of the issues by the Board. All parties are afforded full opportunity to present their respective positions and to produce evidence in support of their contentions. The parties are permitted to argue orally on the record before the hearing officer. At the close of the hearing, the case is transmitted to the Board for decision. The hearing officer prepares an anayisis of the issues and the evidence, but makes no recommendations in regard to resolution of the dispute.

§ 101.35 Procedure before the Board.

The parties have 7 days after the close of the hearing, subject to any extension that may have been granted, to file briefs with the Board and to request oral argument which the Board may or may not grant. However, in cases involving the National Defense and so designated in the notice of hearing, the parties may not file briefs but after the close of the evidence may argue orally upon the record their respective contensions and positions, except that for good cause shown in an application expeditiously made to the Board in Washington, D.C., after the close of the hearing, the Board may grant leave to file briefs in such time as it shall specify. The Board then considers the evidence taken at the hearing and the hearing officer's analysis together with any briefs that may be filed and the oral argument, if any, and issues its determination or makes other disposition of the matter.

[26 FR 7546, Aug. 15, 1961]

§ 101.36 Compliance with determination; further proceedings.

After the issuance of determination by the Board, the regional director in the region in which the proceeding arose communicates with the parties for the purpose of ascertaining their intentions in regard to compliance. Conferences may be held for the purpose of working out details. If the regional director is satisfied that the parties are complying with the determination, he dismisses the charge. If the regional director is not satisfied that the parties are complying, he issues a complaint and notice of hearing, charging violation of section 8(b)(4)(D) of the Act, and the proceeding follows the procedure outlined in §§ 101.8 to 101.15, inclusive. However, if the Board determines that employees represented by a charged union are entitled to perform the work in dispute, the regional director dismisses the charge against that union irrespective of whether the employer complies with the determination.

[36 FR 9132, May 20, 1971]

Subpart G—Procedure Under Section 10(j) and (l) of the Act

§ 101.37 Application for temporary relief or restraining orders.

Whenever it is deemed advisable to seek temporary injunctive relief under section 10(j) or whenever it is determined that a complaint should issue alleging violation of section 8(b)(4)(A), (B), or (C), or section 8(e), or section 8(b)(7), or whenever it is appropriate to seek temporary injunctive relief for a violation of section 8(b)(4)(D), the officer or regional attorney to whom the matter has been referred will make application for appropriate temporary relief or restraining order in the district court of the United States within which the unfair labor practice is alleged to have occurred or within which the party sought to be enjoined resides or transacts business, except that such officer or regional attorney will not apply for injunctive relief under section 10(l) with respect to an alleged violation of section 8(b)(7) if a charge under section 8(a)(2) has been filed and after preliminary investigation, he has reasonable cause to believe that such charge is true and that a compliant should issue.

§ 101.38 Change of circumstances.

Whenever a temporary injunction has been obtained pursuant to section 10(j) and thereafter the administrative law judge hearing the complaint, upon which the determination to seek such injunction was predicated, recommends dismissal of such complaint, in

whole or in part, the officer or regional attorney handling the case for the Board suggests to the district court which issued the temporary injunction the possible change in circumstances arising out of the findings and recommendations of the administrative law judge.

Subpart H—Declaratory Orders and Advisory Opinions Regarding Board Jurisdiction

§ 101.39 Initiation of advisory opinion case.

The question of whether the Board will assert jurisdiction over a labor dispute which is the subject of a proceeding in an agency or court of a State or Territory is initiated by the filing of a petition with the Board. This petition may be filed only if (a) a proceeding is currently pending before such agency or court, and (b) the petitioner is a party to such proceedings before such agency or court or is the agency or court itself. The petition must be in writing and signed. When a petition is filed by a private party, it shall either be sworn to or shall contain a declaration under the penalties of the Criminal Code that its contents are true and correct. It is filed with the executive secretary of the Board in Washington, D.C. No particular form is required, but the petition must be properly captioned and must contain the allegations required by § 102.99 of this chapter. None of the information sought relates to the merits of the dispute. The petition may be withdrawn at any time before the Board issues its advisory opinion determining whether it would or would not assert jurisdiction on the basis of the facts before it.

§ 101.40 Proceedings following the filing of the petition.

(a) A copy of the petition is served upon all other parties and the appropriate regional director by the petitioner.

(b) Interested persons may request intervention by a written motion to the Board. Such intervention may be granted in the discretion of the Board.

(c) Parties other than the petitioner may reply to the petition in writing, admitting or denying any or all of the matters asserted therein.

(d) No briefs shall be filed except upon special permission of the Board.

(e) After review of the entire record, the Board issues an advisory opinion as to whether the facts presented would or would not cause it to assert jurisdiction over the case if the case had been originally filed before it. The Board will limit its advisory opinion to the jurisdictional issue confronting it, and will not presume to render an opinion on the merits of the case or on the question of whether the subject matter of the dispute is governed by The Labor Management Relations Act of 1947, as amended.

§ 101.41 Informal procedures for obtaining opinions on jurisdictional questions.

Although a formal petition is necessary to obtain an advisory opinion from the Board, other avenues are available to persons seeking informal and, in most cases, speedy opinions on jurisdictional issues. In discussion of jurisdiction questions informally with regional office personnel, information and advice concerning the Board's jurisdictional standards may be obtained. Such practices are not intended to be discouraged by the rules providing for formal advisory opinions by the Board, although the opinions expressed by such personnel are not to be regarded as binding upon the Board or the general counsel.

§ 101.42 Procedures for obtaining declaratory orders of the Board.

(a) When both an unfair labor practice charge and a representation petition are pending concurrently in a regional office, appeals from a regional director's dismissals thereof do not follow the same course. Appeal from the dismissal of a charge must be made to the general counsel, while appeal from dismissal of a representation petition may be made to the Board. To obtain uniformity in disposing of such cases on jurisdictional grounds at the same stage of each proceeding, the general counsel may file a petition for a declaratory order of the Board. Such order is intended only to

remove uncertainty with respect to the question of whether the Board would assert jurisdiction over the labor dispute.

(b) A petition to obtain a declaratory Board order may be filed only by the general counsel. It must be in writing and signed. It is filed with the executive secretary of the Board in Washington, D.C. No particular form is required, but the petition must be properly captioned and must contain the allegations required by § 102.106 of this chapter. None of the information sought relates to the merits of the dispute. The petition may be withdrawn any time before the Board issues its declaratory order deciding whether it would or would not assert jurisdiction over the cases.

§ 101.43 Proceedings following the filing of the petition.

(a) A copy of the petition is served upon all other parties.

(b) Interested persons may request intervention by a written motion to the Board. Such intervention may be granted in the discretion of the Board.

(c) All other parties may reply to the petition in writing.

(d) Briefs may be filed.

(e) After review of the record, the Board issues a declaratory order as to whether it will assert jurisdiction over the cases, but it will not render a decision on the merits at this stage of the cases.

(f) The declaratory Board order will be binding on the parties in both cases.

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AUTHORITY: Section 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156).

Section 102.117(c) also issued under section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)).

Sections 102.143(c), 102.144(a) and 102.147(b) also issued under section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

SOURCE: 24 FR 9102, Nov. 7, 1959, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes affecting this Part 102 appear at 37 FR 21481, Oct. 12, 1972.

Subpart A—Definitions

§ 102.1 Terms defined in section 2 of the Act.

The terms "person," "employer," "employee," "representative," "labor organization," "commerce," "affecting commerce," and "unfair labor practice," as used herein, shall have the meanings set forth in section 2 of the National Labor Relations Act, as

amended by Title I of the Labor Management Relations Act, 1947.

§ 102.2 Act; Board; Board agent.

The term "Act" as used herein shall mean the National Labor Relations Act, as amended. The term "Board" shall mean the National Labor Relations Board and shall include any group of three or more members designated pursuant to section 3(b) of the Act. The term "Board agent" shall mean any member, agent, or agency of the Board, including its general counsel.

§ 102.3 General counsel.

The term "general counsel" as used herein shall mean the general counsel under section 3(d) of the Act.

§ 102.4 Region; subregion.

The term "region" as used herein shall mean that part of the United States or any Territory thereof fixed by the Board as a particular region. The term "subregion" shall mean that area within a region fixed by the Board as a particular subregion.

[29 FR 15918, Nov. 28, 1964]

§ 102.5 Regional director; officer-in-charge; regional attorney.

The term "regional director" as used herein shall mean the agent designated by the Board as the regional director for a particular region, and shall also include any agent designated by the Board as officer-in-charge of a subregional office, but the officer-in-charge shall have only such powers, duties, and functions appertaining to regional directors as shall have been duly delegated to such officer-in-charge. The term "regional attorney" as used herein shall mean the attorney designated as regional attorney for a particular region.

[29 FR 15919, Nov. 28, 1964]

§ 102.6 Administrative law judge; hearing officer.

The term "administrative law judge" as used herein shall mean the agent of the Board conducting the hearing in an unfair labor practice or Telegraph Merger Act proceeding. The term "hearing officer" as used herein shall mean the agent of the Board conducting the hearing in a proceeding under section 9 or in a dispute proceeding under section 10(k) of the Act.

§ 102.7 State.

The term "State" as used herein shall include the District of Columbia and all States, Territories, and possessions of the United States.

§ 102.8 Party.

The term "party" as used herein shall mean the regional director in whose region the proceeding is pending and any person named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any Board proceeding, including, without limitation, any person filing a charge or petition under the act, any person named as respondent, as employer, or as party to a contract in any proceeding under the act, and any labor organization alleged to be dominated, assisted, or supported in violation of section 8(a)(1) or 8(a)(2) of the Act; but nothing herein shall be construed to prevent the Board or its designated agent from limiting any party to participate in the proceedings to the extent of his interest only.

Subpart B—Procedure Under Section 10 (a) to (i) of the Act for the Prevention of Unfair Labor Practices [1]

CHARGE

§ 102.9 Who may file; withdrawal and dismissal.

A charge that any person has engaged in or is engaging in any unfair labor practice affecting commerce may be made by any person. Any such charge may be withdrawn, prior to the hearing, only with the consent of the regional director with whom such charge was filed; at the hearing and until the case has been transferred to the Board pursuant to § 102.45, upon

[1] Procedure under sec. 10(j) to (l) of the Act is governed by Subparts F and G of this part. Procedure for unfair labor practice cases and representation cases under sec. 8(b)(7) of the Act is governed by Subpart D of this part.

motion, with the consent of the administrative law judge designated to conduct the hearing; and after the case has been transferred to the Board pursuant to § 102.45, upon motion, with the consent of the Board. Upon withdrawal of any charge, any complaint based thereon shall be dismissed by the regional director issuing the complaint, the administrative law judge designated to conduct the hearing, or the Board.

§ 102.10 Where to file.

Except as provided in § 102.33 such charge shall be filed with the regional director for the region in which the alleged unfair labor practice has occurred or is occurring. A charge alleging that an unfair labor practice has occurred or is occurring in two or more regions may be filed with the regional director for any of such regions.

§ 102.11 Forms; jurat; or declaration.

Such charge shall be in writing and signed, and either shall be sworn to before a notary public, Board agent, or other person duly authorized by law to administer oaths and take acknowledgments or shall contain a declaration by the person signing it, under the penalties of the Criminal Code, that its contents are true and correct to the best of his knowledge and belief. Three additional copies of such charge shall be filed together with one additional copy for each named party respondent.[2]

§ 102.12 Contents.

Such charge shall contain the following:

(a) The full name and address of the person making the charge.

(b) If the charge is filed by a labor organization, the full name and address of any national or international labor organization of which it is an affiliate or constituent unit.

(c) The full name and address of the person against whom the charge is made (hereinafter referred to as the "respondent").

(d) A clear and concise statement of the facts constituting the alleged unfair labor practices affecting commerce.

§ 102.13 [Reserved]

§ 102.14 Service of charge.

Upon the filing of a charge, the charging party shall be responsible for the timely and proper service of a copy thereof upon the person against whom such charge is made. The regional director will, as a matter of course, cause a copy of such charge to be served upon the person against whom the charge is made, but he shall not be deemed to assume responsibility for such service.

COMPLAINT

§ 102.15 When and by whom issued; contents; service.

After a charge has been filed, if it appears to the regional director that formal proceedings in respect thereto should be instituted, he shall issue and cause to be served on all other parties a formal complaint in the name of the Board stating the unfair labor practices and containing a notice of hearing before an administrative law judge at a place therein fixed and at a time not less than 14 days after the service of the complaint. The complaint shall contain:

(a) A clear and concise statement of the facts upon which assertion of jurisdiction by the Board is predicated, and

(b) A clear and concise description of the acts which are claimed to constitute unfair labor practices, where known, the approximate dates and places of such acts and the names of respondent's agents or other representatives by whom committed.

[51 FR 23745, July 1, 1986]

EFFECTIVE DATE NOTE: 29 CFR 102.15 was revised at 51 FR 23745, July 1, 1986. This revision becomes effective on September 29, 1986. For the convenience of the user, the superseded text reads as follows:

§ 102.15 When and by whom issued; contents; service.

After a charge has been filed, if it appears to the regional director that formal proceed-

[2] A blank form for making a charge will be supplied by the regional director upon request.

ings in respect thereto should be instituted, he shall issue and cause to be served upon all the other parties a formal complaint in the name of the Board stating the unfair labor practices and containing a notice of hearing before an administrative law judge at a place therein fixed and at a time not less than 10 days after the service of the complaint. The complaint shall contain (a) a clear and concise statement of the facts upon which assertion of jurisdiction by the Board is predicated, and (b) a clear and concise description of the acts which are claimed to constitute unfair labor practices, including, where known, the approximate dates and places of such acts and the names of respondent's agents or other representatives by whom committed.

[28 FR 7972, Aug. 6, 1963]

§ 102.16 Hearing; change of date or place.

Upon his own motion or upon proper cause shown by any other party, the regional director issuing the complaint may extend the date of such hearing or may change the place at which it is to be held.

[40 F 3204, Feb. 10, 1975]

§ 102.17 Amendment.

Any such complaint may be amended upon such terms as may be deemed just, prior to the hearing, by the regional director issuing the complaint; at the hearing and until the case has been transferred to the Board pursuant to § 102.45, upon motion, by the administrative law judge designated to conduct the hearing; and after the case has been transferred to the Board pursuant to § 102.45, at any time prior to the issuance of an order based thereon, upon motion, by the Board.

§ 102.18 Withdrawal.

Any such complaint may be withdrawn before the hearing by the regional director on his own motion.

§ 102.19 Appeal to the general counsel from refusal to issue or reissue.

(a) If, after the charge has been filed, the regional director declines to issue a complaint or, having withdrawn a complaint pursuant to § 102.18, refuses to reissue it, the regional director shall so advise the parties in writing, accompanied by a simple statement of the procedural or other grounds for his action. The person making the charge may obtain a review of such action by filing an appeal with the general counsel in Washington, D.C., and filing a copy of the appeal with the regional director, within 14 days from the service of the notice of such refusal to issue or reissue by the regional director, except as a shorter period is provided by § 102.81. If an appeal is taken the person doing so should notify all other parties of his action, but any failure to give such notice shall not affect the validity of the appeal. The appeal shall contain a complete statement setting forth the facts and reasons upon which it is based. A request for an extension of time to file an appeal shall be in writing and be received by the general counsel, and a copy of such request filed with the regional director, prior to the expiration of the filing period. Copies of the acknowledgment of the filing of an appeal and of any ruling on a request for an extension of time for the filing of an appeal shall be served on all parties. Consideration of an appeal untimely filed is within the discretion of the general counsel upon good cause shown.

(b) Oral presentation in Washington, D.C., of the appeal issues may be permitted a party on written request made within 4 days after service of acknowledgment of the filing of an appeal. In the event such request is granted, the other parties shall be notified and afforded, without additional request, a like opportunity at another appropriate time.

(c) The general counsel may sustain the regional director's refusal to issue or reissue a complaint, stating the grounds of his affirmance, or may direct the regional director to take further action; the general counsel's decision shall be served on all the parties. A motion for reconsideration of the decision must be filed within 14 days of service of the decision, except as hereinafter provided, and shall state with particularity the error requiring reconsideration. A motion for reconsideration based upon newly discovered evidence which has become available only since the decision on appeal shall be filed promptly on discovery of such evidence. Motions for

reconsideration of a decision previously reconsidered will not be entertained, except in unusual situations where the moving party can establish that new evidence has been discovered which could not have been discovered by diligent inquiry prior to the first reconsideration.

[32 FR 9548, July 1, 1967, as amended at 51 FR 23746, July 1, 1986]

EFFECTIVE DATE NOTE: 29 CFR 102.19(a) and (c) were revised at 51 FR 23746, July 1, 1986. This revision becomes effective on September 29, 1986. For the convenience of the user, the superseded text reads as follows:

§ 102.19 Appeal to the general counsel from refusal to issue or reissue.

(a) If, after the charge has been filed, the regional director declines to issue a complaint, or having withdrawn a complaint pursuant to § 102.18, refuses to reissue it, he shall so advise the parties in writing, accompanied by a simple statement of the procedural or other grounds for his action. The person making the charge may obtain a review of such action by filing an appeal with the general counsel in Washington, D.C., and filing a copy of the appeal with the regional director, within 10 days from the service of the notice of such refusal to issue or reissue by the regional director, except as a shorter period is provided by § 102.81. If an appeal is taken the person doing so should notify all other parties of his action, but any failure to give such notice shall not affect the validity of the appeal. The appeal shall contain a complete statement setting forth the facts and reasons upon which it is based. A request for extension of time to file an appeal shall be in writing and be received by the general counsel, and a copy of such request filed with the regional director, prior to the expiration of the filing period. Copies of the acknowledgement of the filing of an appeal and of any ruling on a request for an extension of time for the filing of an appeal shall be served on all parties. Consideration of an appeal untimely filed is within the discretion of the general counsel upon good cause shown.

* * * * *

(c) The general counsel may sustain the regional director's refusal to issue or reissue a complaint, stating the grounds of his affirmance, or may direct the regional director to take further action; the general counsel's decision shall be served on all the parties. A motion for reconsideration of the decision must be filed within 10 days of service of the decision, except as hereinafter provided, and shall state with particularity the error requiring reconsideration. A motion for reconsideration based upon newly discovered evidence which has become available only since the decision on appeal shall be filed promptly on discovery of such evidence. Motions for reconsideration of a decision previously reconsidered will not be entertained, except in unusual situations where the moving party can establish that new evidence has been discovered which could not have been discovered by diligent inquiry prior to the first reconsideration.

ANSWER

§ 102.20 Answer to complaint; time for filing; contents; allegations not denied deemed admitted.

The respondent shall, within 14 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

[51 FR 23746, July 1, 1986]

EFFECTIVE DATE NOTE: 29 CFR 102.20 was revised at 51 FR 23746, July 1, 1986. This revision becomes effective on September 29, 1986. For the convenience of the user, the superseded text reads as follows:

§ 102.20 Answer to complaint; time for filing; contents; allegations not denied deemed admitted.

The responden shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and

shall be so found by the Board, unless good cause to the contrary is shown.

§ 102.21 Where to file; service upon the parties; form.

An original and four copies of the answer shall be filed with the regional director issuing the complaint. Immediately upon the filing of his answer, respondent shall serve a copy thereof on each of the other parties. An answer of a party represented by counsel shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his answer and state his address. Except when otherwise specifically provided by rule or statute, an answer need not be verified or accompanied by affidavit. The signature of an attorney constitutes a certificate by him that he has read the answer; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If an answer is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the action may proceed as though the answer had not been served. For a willful violation of this rule an attorney may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.

§ 102.22 Extension of time for filing.

Upon his own motion or upon proper cause shown by any other party the regional director issuing the complaint may by written order extend the time within which the answer shall be filed.

§ 102.23 Amendment.

The respondent may amend his answer at any time prior to the hearing. During the hearing or subsequent thereto, he may amend his answer in any case where the complaint has been amended, within such period as may be fixed by the administrative law judge or the Board. Whether or not the complaint has been amended, the answer may, in the discretion of the administrative law judge or the Board, upon motion, be amended upon such terms and within such periods as may be fixed by the administrative law judge or the Board.

MOTIONS

§ 102.24 Motions; where to file; contents; service on other parties; promptness in filing and response.

All motions under §§ 102.16, 102.22, and 102.29 made prior to hearing shall be filed in writing with the regional director issuing the complaint. All motions for summary judgment made prior to hearing shall be filed in writing with the Board pursuant to the provisions of § 102.50. All other motions prior to hearing shall be filed in writing with the chief administrative law judge in Washington, D.C., with the deputy chief judge in San Francisco, California, with the associate chief judge in New York, New York, or with the associate chief judge in Atlanta, Georgia, as the case may be. All motions made at the hearing shall be made in writing to the administrative law judge or stated orally on the record. All motions filed subsequent to the hearing, but before the transfer of the case to the Board pursuant to § 102.45, shall be filed with the administrative law judge, care of the chief administrative law judge in Washington, D.C., the deputy chief judge, San Francisco, California, the associate chief judge in New York, New York, or the associate chief judge in Atlanta, Georgia, as the case may be. All motions made subsequent to transfer of the case to, and while it is pending before, the Board shall be filed with the executive secretary of the Board in Washington, D.C., as provided in § 102.47. Motions shall briefly state the order or relief applied for and the grounds therefor. All motions prior to transfer of the case to the Board shall be filed by the moving party in an original and four copies and a copy thereof shall be immediately served on the other parties. Unless otherwise provided in these rules, motions and responses thereto shall be filed promptly and within such time as not to delay the proceeding.

(49 Stat. 449; 29 U.S.C. 151-166, as amended by (61 Stat. 136; 29 U.S.C. Sup. 151-167), (65 Stat. 601; 29 U.S.C. 158, 159, 168), (73 Stat.

519; 29 U.S.C. 141-168), (88 Stat. 395-397; 29 U.S.C. 152, 158, 169, 183))

[45 FR 51192, Aug. 1, 1980]

§ 102.25 Ruling on motions.

An administrative law judge designated by the chief administrative law judge, by the deputy chief judge in San Francisco, California, by the associate chief judge in New York, New York, or by the associate chief judge in Atlanta, Georgia, as the case may be, shall rule on all prehearing motions (except as provided in §§ 102.16, 102.22, 102.29, and 102.50), and all such rulings and orders shall be issued in writing and a copy served on each of the parties. The administrative law judge designated to conduct the hearing shall rule on all motions after opening of the hearing (except as provided in § 102.47), and any orders in connection therewith, if announced at the hearing, shall be stated orally on the record; in all other cases the administrative law judge shall issue such rulings and orders in writing and shall cause a copy of the same to be served on each of the parties, or shall make his ruling in his decision. Whenever the administrative law judge has reserved his ruling on any motion, and the proceeding is thereafter transferred to and continued before the Board pursuant to § 102.50, the Board shall rule on such motion.

(49 Stat. 449; 29 U.S.C. 151-166, as amended by (61 Stat. 136; 29 U.S.C. Sup. 151-167), (65 Stat. 601; 29 U.S.C. 158, 159, 168), (73 Stat. 519; 29 U.S.C. 141-168), (88 Stat. 395-397; 29 U.S.C. 152, 158, 169, 183))

[45 FR 51193, Aug. 1, 1980]

§ 102.26 Motions, rulings, and orders part of the record; rulings not to be appealed directly to the Board without special permission; requests for special permission to appeal.

All motions, rulings, and orders shall become a part of the record, except that rulings on motions to revoke subpenas shall become a part of the record only upon the request of the party aggrieved thereby as provided in § 102.31. Unless expressly authorized by the Rules and Regulations, rulings by the regional director or by the administrative law judge on motions and/or by the administrative law judge on objections, and orders in connection therewith, shall not be appealed directly to the Board except by special permission of the Board, but shall be considered by the Board in reviewing the record if exception to the ruling or order is included in the statement of exceptions filed with the Board pursuant to § 102.46. Requests to the Board for special permission to appeal from a ruling of the regional director or of the administrative law judge, together with the appeal from such ruling, shall be filed promptly, in writing, and shall briefly state the reasons special permission should be granted and the grounds relied on for the appeal. The moving party shall immediately serve a copy of the request for special permission and of the appeal on the other parties and, if the request involves a ruling by an administrative law judge, on the administrative law judge. Any statement in opposition or other response to the request and/or to the appeal shall be filed promptly, in writing, and shall be served immediately on the other parties and on the administrative law judge, if any. If the Board grants the request for special permission to appeal, it may proceed forthwith to rule on the appeal.

[47 FR 40770, Sept. 15, 1982]

§ 102.27 Review of granting of motion to dismiss entire complaint; reopening of the record.

If any motion in the nature of a motion to dismiss the complaint in its entirety is granted by the administrative law judge before filing his decision, any party may obtain a review of such action by filing a request therefor with the Board in Washington, D.C., stating the grounds for review, and immediately on such filing shall serve a copy thereof on the regional director and on the other parties. Unless such request for review is filed within 28 days from the date of the order of dismissal, the case shall be closed.

[51 FR 23746, July 1, 1986]

EFFECTIVE DATE NOTE: 29 CFR 102.27 was revised at 51 FR 23746, July 1, 1986. This revision becomes effective on September 29,

1986. For the convenience of the user, the superseded text reads as follows:

§ 102.27 Review of granting of motion to dismiss entire complaint; reopening of the record.

If any motion in the nature of a motion to dismiss the complaint in its entirety is granted by the administrative law judge before filing his decision, any party may obtain a review of such action by filing a request therefor with the Board in Washington, D.C., stating the grounds for review, and immediately on such filing shall serve a copy thereof on the regional director and on the other parties. Unless such request for review is filed within 20 days from the date of the order of dismissal, the case shall be closed.

[47 FR 40771, Sept. 15, 1982]

§ 102.28 Filing of answer or other participation in proceedings not a waiver of rights.

The right to make motions or to make objections to rulings upon motions shall not be deemed waived by the filing of an answer or by other participation in the proceedings before the administrative law judge or the Board.

Intervention

§ 102.29 Intervention; requisites; rulings on motions to intervene.

Any person desiring to intervene in any proceeding shall file a motion in writing or, if made at the hearing, may move orally on the record, stating the grounds upon which such person claims an interest. Prior to the hearing, such a motion shall be filed with the regional director issuing the complaint; during the hearing such motion shall be made to the administrative law judge. An original and four copies of written motions shall be filed. Immediately upon filing such motion, the moving party shall serve a copy thereof upon each of the other parties. The regional director shall rule upon all such motions filed prior to the hearing, and shall cause a copy of said rulings to be served upon each of the other parties, or may refer the motion to the administrative law judge for ruling. The administrative law judge shall rule upon all such motions made at the hearing or referred to him by the regional director, in the manner set forth in § 102.25. The regional director or the administrative law judge, as the case may be, may by order permit intervention in person or by counsel or other representative to such extent and upon such terms as he may deem proper.

Witnesses, Depositions, and Subpenas

§ 102.30 Examination of witnesses; deposition.

Witnesses shall be examined orally under oath, except that for good cause shown after the issuance of a complaint, testimony may be taken by deposition.

(a) Applications to take depositions shall be in writing setting forth the reasons why such depositions should be taken, the name and post office address of the witness, the matters concerning which it is expected the witness will testify, and the time and place proposed for the taking of the deposition, together with the name and address of the person before whom it is desired that the deposition be taken (for the purposes of this section hereinafter referred to as the "officer"). Such application shall be made to the regional director prior to the hearing, and to the administrative law judge during and subsequent to the hearing but before transfer of the case to the Board pursuant to § 102.45 or § 102.50. Such application shall be served upon the regional director or the administrative law judge, as the case may be, and upon all other parties, not less than 7 days (when the deposition is to be taken within the continental United States) and 15 days (if the deposition is to be taken elsewhere) prior to the time when it is desired that the deposition be taken. The regional director or administrative law judge, as the case may be, shall upon receipt of the application, if in his discretion good cause has been shown, make and serve upon the parties an order which will specify the name of the witness whose deposition is to be taken and the time, the place, and the designation of the officer before whom the witness is to testify, who may or may not be the same officer as that specified in the application. Such order shall be served upon all

the other parties by the regional director or upon all parties by the administrative law judge.

(b) Such deposition may be taken before any officer authorized to administer oaths by the laws of the United States or of the place where the examination is held, including any agent of the Board authorized to administer oaths. If the examination is held in a foreign country, it may be taken before any secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States.

(c) At the time and place specified in said order the officer designated to take such deposition shall permit the witness to be examined and cross-examined under oath by all the parties appearing, and his testimony shall be reduced to typewriting by the officer or under his direction. All objections to questions or evidence shall be deemed waived unless made at the examination. The officer shall not have power to rule upon any objections but he shall note them upon the deposition. The testimony shall be subscribed by the witness in the presence of the officer who shall attach his certificate stating that the witness was duly sworn by him, that the deposition is a true record of the testimony and exhibits given by the witness, and that said officer is not of counsel or attorney to any of the parties nor interested in the event of the proceeding or investigation. If the deposition is not signed by the witness because he is ill, dead, cannot be found, or refuses to sign it, such fact shall be included in the certificate of the officer and the deposition may then be used as fully as though signed. The officer shall immediately deliver an original and two copies of said transcript, together with his certificate, in person or by registered or certified mail to the regional director or the administrative law judge, care of the chief administrative law judge in Washington, D.C., the deputy chief judge, in San Francisco, California, the associate chief judge in New York, New York, or the associate chief judge in Atlanta, Georgia, as the case may be.

(d) The administrative law judge shall rule upon the admissibility of the deposition or any part thereof.

(e) All errors or irregularities in compliance with the provisions of this section shall be deemed waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is or, with due diligence, might have been ascertained.

(f) If the parties so stipulate in writing, depositions may be taken before any person at any time or place, upon any notice and in any manner, and when so taken may be used like other depositions.

[National Labor Relations Act approved July 5, 1935, 49 Stat. 449; 29 U.S.C. 151-166, as amended by Act of June 23, 1947 (61 Stat. 136; 29 U.S.C. Sup. 151-167), Act of Oct. 22, 1951 (65 Stat. 601; 29 U.S.C. 158, 159, 168), Act of Sept. 14, 1959 (73 Stat. 519; 29 U.S.C. 141-168), and Act of July 26, 1974 (88 Stat. 395-397; 29 U.S.C. 152, 158, 169, 183)]

[24 FR 9102, Nov. 7, 1959, as amended at 45 FR 37425, June 3, 1980; 45 FR 51193, Aug. 1, 1980]

§ 102.31 Issuance of subpenas; petitions to revoke subpenas; rulings on claim of privilege against self-incrimination; subpena enforcement proceedings; right to inspect and copy data.

(a) Any member of the Board shall, on the written application of any party, forthwith issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence, or documents, in their possession or under their control. Applications for subpenas, if filed prior to the hearing, shall be filed with the regional director. Applications for subpenas filed during the hearing shall be filed with the administrative law judge. Either the regional director or the administrative law judge, as the case may be, shall grant the application, on behalf of any member of the Board. Applications for subpenas may be made ex parte. The subpena shall show on its face the name and address of the party at whose request the subpena was issued.

(b) Any person, served with a subpena, whether ad testificandum or duces tecum, if he does not intend to comply

with the subpena, shall, within 5 days after the date of service of the subpena upon him, petition in writing to revoke the subpena. All petitions to revoke subpenas shall be served upon the party at whose request the subpena was issued. Such petition to revoke, if made prior to the hearing, shall be filed with the regional director and the regional director shall refer the petition to the administrative law judge or the Board for ruling. Petitions to revoke subpenas filed during the hearing shall be filed with the administrative law judge. Notice of the filing of petitions to revoke shall be promptly given by the regional director or the administrative law judge, as the case may be, to the party at whose request the subpena was issued. The administrative law judge or the Board, as the case may be, shall revoke the subpena if in its opinion the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the subpena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpena is otherwise invalid. The administrative law judge or the Board, as the case may be, shall make a simple statement of procedural or other grounds for the ruling on the petition to revoke. The petition to revoke, any answer filed thereto, and any ruling thereon shall not become part of the official record except upon the request of the party aggrieved by the ruling.

(c) With the approval of the Attorney General of the United States, the Board may issue an order requiring any individual to give testimony or provide other information at any proceeding before the Board if, in the judgment of the Board, (1) the testimony or other information from such individual may be necessary to the public interest, and (2) such individual has refused or is likely to refuse to testify or provide other information on the basis of his privilege against selfincrimination. Requests for the issuance of such an order by the Board may be made by any party. Prior to hearing, and after transfer of the proceeding to the Board, such requests shall be made to the Board in Washington, D.C., and the Board shall take such action thereon as it deems appropriate. During the hearing, and thereafter while the proceeding is pending before the administrative law judge, such requests shall be made to the administrative law judge. If the administrative law judge denies the request, his ruling shall be subject to appeal to the Board in Washington, D.C., in the manner and to the extent provided in § 102.26 with respect to rulings and orders by an administrative law judge, except that requests for permission to appeal in this instance shall be filed within 24 hours of the administrative law judge's ruling. If no appeal is sought within such time, or the appeal is denied, the ruling of the administrative law judge shall become final and his denial shall become the ruling of the Board. If the administrative law judge deems the request appropriate, he shall recommend that the Board seek the approval of the Attorney General for the issuance of the order, and the Board shall take such action on the administrative law judge's recommendation as it deems appropriate. Until the Board has issued the requested order no individual who claims the privilege against self-incrimination shall be required, or permitted, to testify or to give other information respecting the subject matter of the claim.

(d) Upon the failure of any person to comply with a subpena issued upon the request of a private party, the general counsel shall, in the name of the Board but on relation of such private party, institute proceedings in the appropriate district court for the enforcement thereof, unless in the judgment of the Board the enforcement of such subpena would be inconsistent with law and with the policies of the act. Neither the general counsel nor the Board shall be deemed thereby to have assumed responsibility for the effective prosecution of the same before the court.

(e) Persons compelled to submit data or evidence at a public proceeding are entitled to retain or, on payment of lawfully prescribed costs, to procure copies or transcripts of the data or evidence submitted by them. Persons compelled to submit data or evidence

in the nonpublic investigative stages of proceedings may, for good cause, be limited by the regional director to inspection of the official transcript of their testimony, but shall be entitled to make copies of documentary evidence or exhibits which they have produced.

[24 FR 9102, Nov. 7, 1959, as amended at 35 FR 18797, Dec. 11, 1970]

§ 102.32 Payment of witness fees and mileage; fees of persons taking depositions.

Witnesses summoned before the trial examiner shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear and the person taking the deposition shall be paid by the party at whose instance the deposition is taken.

Transfer, Consolidation, and Severance

§ 102.33 Transfer of charge and proceeding from region to region; consolidation of proceedings in same region; severance.

(a) Whenever the general counsel deems it necessary in order to effectuate the purposes of the Act or to avoid unnecessary costs or delay, he may permit a charge to be filed with him in Washington, D.C., or may, at any time after a charge has been filed with a regional director pursuant to § 102.10, order that such charge and any proceeding which may have been initiated with respect thereto:

(1) Be transferred to and continued before him for the purpose of investigation or consolidation with any other proceeding which may have been instituted in a regional office or with him; or

(2) Be consolidated with any other proceeding which may have been instituted in the same region; or

(3) Be transferred to and continued in any other region for the purpose of investigation or consolidation with any proceeding which may have been instituted in or transferred to such other region; or

(4) Be severed from any other proceeding with which it may have been consolidated pursuant to this section.

(b) The provisions of §§ 102.9 to 102.32, inclusive, shall, insofar as applicable, govern proceedings before the general counsel pursuant to this section, and the powers granted to regional directors in such provisions shall, for the purpose of this section, be reserved to and exercised by the general counsel. After the transfer of any charge and any proceeding which may have been instituted with respect thereto from one region to another pursuant to this section, the provisions of this subpart shall, insofar as applicable, govern such charge and such proceeding as if the charge had originally been filed in the region to which the transfer is made.

(c) The regional director may, prior to hearing, exercise the powers in paragraph (a)(2) and (4) of this section with respect to proceedings pending in his region.

(d) Motions to consolidate or sever proceedings after issuance of complaint shall be filed as provided in § 102.24 and ruled upon as provided in § 102.25, except that the regional director may consolidate or sever proceedings prior to hearing upon his own motion. Rulings by the administrative law judge upon motions to consolidate or sever may be appealed to the Board as provided in § 102.26.

[32 FR 9549, July 1, 1967, as amended at 36 FR 9152, May 20, 1971]

Hearings

§ 102.34 Who shall conduct; to be public unless otherwise ordered.

The hearing for the purpose of taking evidence upon a complaint shall be conducted by an administrative law judge designated by the chief administrative law judge in Washington, D.C., or *by* the deputy chief judge, San Francisco, California, by the associate chief judge in New York, New York, or by the associate chief judge in Atlanta, Georgia, as the case may be, unless the Board or any

member thereof presides. At any time an administrative law judge may be designated to take the place of the administrative law judge previously designated to conduct the hearing. Such hearing shall be public unless otherwise ordered by the Board or the administrative law judge.

(49 Stat. 449; 29 U.S.C. 151-166, as amended by (61 Stat. 136; 29 U.S.C. Sup. 151-167), (65 Stat. 601; 29 U.S.C. 158, 159, 168), (73 Stat. 519; 29 U.S.C. 141-168), (88 Stat. 395-397; 29 U.S.C. 152, 158, 169, 183))

[45 FR 51193, Aug. 1, 1980]

§ 102.35 Duties and powers of administrative law judge.

It shall be the duty of the administrative law judge to inquire fully into the facts as to whether the respondent has engaged in or is engaging in an unfair labor practice affecting commerce as set forth in the complaint or amended complaint. The administrative law judge shall have authority, with respect to cases assigned to him, between the time he is designated and transfer of the case to the Board, subject to the rules and regulations of the Board and within its powers:

(a) To administer oaths and affirmations;

(b) To grant applications for subpenas;

(c) To rule upon petitions to revoke subpenas;

(d) To rule upon offers of proof and receive relevant evidence;

(e) To take or cause depositions to be taken whenever the ends of justice would be served thereby;

(f) To regulate the course of the hearing and, if appropriate or necessary, to exclude persons or counsel from the hearing for contemptuous conduct and to strike all related testimony of witnesses refusing to answer any proper question;

(g) To hold conferences for the settlement or simplification of the issues by consent of the parties, but not to adjust cases;

(h) To dispose of procedural requests, motions or similar matters, including motions referred to the administrative law judge by the regional director and motions for summary judgment or to amend pleadings; also to dismiss complaints or portions thereof; to order hearings reopened; and upon motion order proceedings consolidated or severed prior to issuance of administrative law judge decisions;

(i) To approve a stipulation voluntarily entered into by all parties to the case which will dispense with a verbatim written transcript of record of the oral testimony adduced at the hearing, and which will also provide for the waiver by the respective parties of their right to file with the Board exceptions to the findings of fact (but not to conclusions of law or recommended orders) which the administrative law judge shall make in his decision;

(j) To make and file decisions in conformity with Pub. L. 89-554, 5 U.S.C. 557;

(k) To call, examine, and cross-examine witnesses and to introduce into the record documentary or other evidence;

(l) To request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;

(m) To take any other action necessary under the foregoing and authorized by the published rules and regulations of the Board.

[24 FR 9102, Nov. 7, 1959, as amended at 28 FR 7972, Aug. 6, 1963; 36 FR 9132, May 20, 1971; 36 FR 22678, Nov. 27, 1971; 37 FR 4911, Mar. 7, 1972]

§ 102.36 Unavailability of administrative law judge.

In the event the administrative law judge designated to conduct the hearing becomes unavailable to the Board after the hearing has been opened, the chief administrative law judge, in Washington, D.C., the deputy chief judge, in San Francisco, California, the associate chief judge in New York, New York, or the associate chief judge in Atlanta, Georgia, as the case may be, may designate another administrative law judge for the purpose of further hearing or other appropriate action.

(49 Stat. 449; 29 U.S.C. 151-166, as amended by (61 Stat. 136; 29 U.S.C. Sup. 151-167), (65 Stat. 601; 29 U.S.C. 158, 159, 168), (73 Stat. 519; 29 U.S.C. 141-168), (88 Stat. 395-397; 29 U.S.C. 152, 158, 169, 183))

[45 FR 51193, Aug. 1, 1980]

§ 102.37 Disqualification of administrative law judge.

An administrative law judge may withdraw from a proceeding whenever he deems himself disqualified. Any party may request the administrative law judge, at any time following his designation and before filing of his decision, to withdraw on ground of personal bias or disqualification, by filing with him promptly upon the discovery of the alleged facts a timely affidavit setting forth in detail the matters alleged to constituate grounds for disqualification. If, in the opinion of the administrative law judge, such affidavit is filed with due diligence and is sufficient on its face, he shall forthwith disqualify himself and withdraw from the proceeding. If the administrative law judge does not disqualify himself and withdraw from the proceeding, he shall so rule upon the record, stating the grounds for his ruling and proceed with the hearing, or, if the hearing has closed, he shall proceed with issuance of his decision, and the provisions of § 102.26, with respect to review of rulings of administrative law judges, shall thereupon apply.

(49 Stat. 449; 29 U.S.C. 151-166, as amended by (61 Stat. 136; 29 U.S.C. Sup. 151-167), (65 Stat. 601; 29 U.S.C. 158, 159, 168), (73 Stat. 519; 29 U.S.C. 141-168), (88 Stat. 395-397; 29 U.S.C. 152, 158, 169, 183))

[45 FR 51193, Aug. 1, 1980]

§ 102.38 Rights of parties.

Any party shall have the right to appear at such hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses, and to introduce into the record documentary or other evidence, except that the participation of any party shall be limited to the extent permitted by the administrative law judge: *And provided further,* That documentary evidence shall be submitted in duplicate.

§ 102.39 Rules of evidence controlling so far as practicable.

Any such proceeding shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the rules of civil procedure for the district courts of the United States, adopted by the Supreme Court of the United States pursuant to the Act of June 19, 1934, (Title 28 U.S.C., secs. 723-B, 723-C).

§ 102.40 Stipulations of fact admissible.

In any such proceeding stipulations of fact may be introduced in evidence with respect to any issue.

§ 102.41 Objection to conduct of hearing; how made; objections not waived by further participation.

Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, may be stated orally or in writing, accompanied by a short statement of the grounds of such objection, and included in the record. No such objection shall be deemed waived by further participation in the hearing.

§ 102.42 Filing of briefs and proposed findings with the administrative law judge and oral argument at the hearing.

Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing. Any party shall be entitled, upon request made before the close of the hearing, to file a brief or proposed findings and conclusions, or both, with the administrative law judge who may fix a reasonable time for such filing, but not in excess of 35 days from the close of the hearing. Requests for further extensions of time shall be made to the chief administrative law judge in Washington, D.C., to the deputy chief judge in San Francisco, California, to the associate chief judge in New York, New York, or to the associate chief judge in Atlanta, Georgia, as the case may be. No request will be considered unless received at least 3 days prior to the expiration of the time fixed for the filing of briefs or proposed findings and conclusions. Notice of the request for any extension shall be immediately served upon all other parties, and proof of service shall be fur-

nished. Three copies of the brief or proposed findings and conclusions shall be filed with the administrative law judge, and copies shall be served on the other parties, and a statement of such service shall be furnished.

(49 Stat. 449; 29 U.S.C. 151-166, as amended by (61 Stat. 136; 29 U.S.C. Sup. 151-167), (65 Stat. 601; 29 U.S.C. 158, 159, 168), (73 Stat. 519; 29 U.S.C. 141-168), (88 Stat. 395-397; 29 U.S.C. 152, 158, 169, 183))

[45 FR 51193, Aug. 1, 1980]

§ 102.43 Continuance and adjournment.

In the discretion of the administrative law judge, the hearing may be continued from day to day, or adjourned to a later date or to a different place, by announcement thereof at the hearings by the administrative law judge, or by other appropriate notice.

§ 102.44 Misconduct at hearing before an Administrative Law Judge or the Board; refusal of witness to answer questions.

(a) Misconduct at any hearing before an administrative law judge or before the Board shall be ground for summary exclusion from the hearing.

(b) Such misconduct of an aggravated character, when engaged in by an attorney or other representative of a party, shall be ground for suspension or disbarment by the Board from further practice before it after due notice and hearing.

(c) The refusal of a witness at any such hearing to answer any question which has been ruled to be proper shall, in the discretion of the administrative law judge, be ground for striking all testimony previously given by such witness on related matters.

Administrative Law Judge's Decision and Transfer of Case to the Board

§ 102.45 Administrative Law Judge's decision; contents; service; transfer of the case to the Board; contents of record in case.

(a) After hearing for the purpose of taking evidence upon a complaint, the administrative law judge shall prepare a decision. Such decision shall contain findings of fact, conclusions, and the reasons or basis therefor, upon all material issues of fact, law, or discretion presented on the record, and shall contain recommendations as to what disposition of the case should be made, which may include if it be found that the respondent has engaged in or is engaging in the alleged unfair labor practices, a recommendation for such affirmative action by the respondent as will effectuate the policies of the act. The administrative law judge shall file the original of his decision with the Board and cause a copy thereof to be served upon each of the parties. Upon the filing of the decision, the Board shall enter an order transferring the case to the Board and shall serve copies of the order, setting forth the date of such transfer, upon all the parties. Service of the administrative law judge's decision and of the order transferring the case to the Board shall be complete upon mailing.

(b) The charge upon which the complaint was issued and any amendments thereto, the complaint and any amendments thereto, notice of hearing, answer and any amendments thereto, motions, rulings, orders, the stenographic report of the hearing, stipulations, exhibits, documentary evidence, and depositions, together with the administrative law judge's decision and exceptions, and any cross-exceptions or answering briefs as provided in § 102.46, shall constitute the record in the case.

[28 FR 7973, Aug. 6, 1963]

Exceptions to the Record and Proceedings

§ 102.46 Exceptions, cross-exceptions, briefs, answering briefs; time for filing; where to file; service on the parties; extension of time; effect of failure to include matter in exceptions; oral arguments.

(a) Within 28 days, or within such further period as the Board may allow, from the date of the service of the order transferring the case to the Board, pursuant to § 102.45, any party may (in accordance with section 10(c) of the act and §§ 102.111 and 102.112 of these rules) file with the Board in Washington, D.C., exceptions to the administrative law judge's decision or to any other part of the record or pro-

ceedings (including rulings upon all motions or objections), together with a brief in support of the exceptions. Any party may, within the same period, file a brief in support of the administrative law judge's decision. The filing of such exceptions and briefs is subject to the provisions of paragraph (j) of this section. Requests for extensions of time to file exceptions or briefs shall be in writing and copies thereof shall be served promptly on the other parties. Such requests must be received by the Board 3 days prior to the due date.

(b)(1) Each exception (i) shall set forth specifically the questions of procedure, fact, law, or policy to which exception is taken; (ii) shall identify that part of the administrative law judge's decision to which objection is made; (iii) shall designate by precise citation of page the portions of the record relied on; and (iv) shall concisely state the grounds for the exception. If a supporting brief is filed the exceptions document shall not contain any argument or citation of authority in support of the exceptions, but such matters shall be set forth only in the brief. If no supporting brief is filed the exceptions document shall also include the citation of authorities and argument in support of the exceptions, in which event the exceptions document shall be subject to the 50-page limit as for briefs set forth in § 102.46(j).

(2) Any exception to a ruling, finding, conclusion, or recommendation which is not specifically urged shall be deemed to have been waived. Any exception which fails to comply with the foregoing requirements may be disregarded.

(c) Any brief in support of exceptions shall contain no matter not included within the scope of the exceptions and shall contain, in the order indicated, the following:

(1) A clear and concise statement of the case containing all that is material to the consideration of the questions presented.

(2) A specification of the questions involved and to be argued, together with a reference to the specific exceptions to which they relate.

(3) The argument, presenting clearly the points of fact and law relied on in support of the position taken on each question, with specific reference to the record and the legal or other material relied on.

(d)(1) Within 14 days, or such further period as the Board may allow, from the last date on which exceptions and any supporting brief may be filed, a party opposing the exceptions may file an answering brief to the exceptions, in accordance with the provisions of paragraph (j) of this section.

(2) The answering brief to the exceptions shall be limited to the questions raised in the exceptions and in the brief in support thereof. It shall present clearly the points of fact and law relied upon in support of the position taken on each question. Where exception has been taken to a factual finding of the administrative law judge and it is proposed to support that finding, the answering brief should specify those pages of the record which, in the view of the party filing the brief, support the administrative law judge's finding.

(3) Requests for extension of time to file an answering brief to the exceptions shall be in writing and copies thereof shall be served promptly on the other parties. Such requests must be received by the Board 3 days prior to the due date.

(e) Any party who has not previously filed exceptions may, within 14 days, or such further period as the Board may allow, from the last date on which exceptions and any supporting brief may be filed, file cross-exceptions to any portion of the administrative law judge's decision, together with a supporting brief, in accordance with the provisions of paragraphs (b) and (j) of this section.

(f)(1) Within 14 days, or such further period as the Board may allow, from the last date on which cross-exceptions and any supporting brief may be filed, any other party may file an answering brief to such cross-exceptions in accordance with the provisions of paragraphs (c) and (j) of this section. Such answering brief shall be limited to the questions raised in the cross-exceptions.

(2) Requests for extension of time to file cross-exceptions, or answering brief to cross-exceptions, shall be in

writing and copies thereof shall be served promptly on each of the other parties. Such requests must be received by the Board 3 days prior to the due date.

(g) No further briefs shall be filed except by special leave of the Board. Requests for such leave shall be in writing and copies thereof shall be serviced promptly on the other parties.

(h) No matter not included in exceptions or cross-exceptions may thereafter be argued before the Board, or in any further proceeding.

(i) Should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board simultaneously with the statement of any exceptions or cross-exceptions filed pursuant to the provisions of this section with a statement of service on the other parties. The Board shall notify the parties of the time and place of oral argument, if such permission is granted. Oral arguments are limited to 30 minutes for each party entitled to participate. No request for additional time will be granted unless timely application is made in advance of oral argument.

(j) Exceptions to the administrative law judge's decision, or to the record, and briefs shall be printed or otherwise legibly duplicated. Carbon copies of typewritten matter will not be accepted. Eight copies of such documents shall be filed with the Board in Washington, DC., and copies shall also be served promptly on the other parties. All documents filed pursuant to this section shall be double spaced on 8½-by 11-inch paper. A brief filed pursuant to this section shall not be combined with any other brief, and shall not exceed 50 pages in length, exclusive of subject index and table of cases and other authorities cited, unless permission to exceed that limit is obtained from the Board by motion, setting forth the reasons therefore, filed not less than 10 days prior to the date the brief is due. Where any brief filed pursuant to this section exceeds 20 pages, it shall contain a subject index with page references and an alphabetical table of cases and other authorities cited.

[28 FR 7973, Aug. 6, 1963, as amended at 51 FR 15614, Apr. 25, 1986; 51 FR 23746, July 1, 1986]

EFFECTIVE DATE NOTE: 29 CFR 102.46(a), (d)(1), (e), and (f)(1) were revised at 51 FR 23746, July 1, 1986. This revision becomes effective on September 29, 1986. For the convenience of the user, the superseded text reads as follows:

§ 102.46 Exceptions, cross-exceptions, briefs, answering briefs; time for filing; where to file; service on parties; extension of time; effect of failure to include matter in exceptions; oral arguments.

(a) Within 20 days, or within such further period as the Board may allow, from the date of the service of the order transferring the case to the Board, pursuant to § 102.45, any party may (in accordance with section 10(c) of the act and §§ 102.113 and 102.114 of these rules) file with the Board in Washington, D.C., exceptions to the administrative law judge's decision or to any other part of the record or proceedings (including rulings upon all motions of objections), together with a brief in support of said exceptions. Any party may, within the same period, file a brief in support of the administrative law judge's decision. The filing of such exceptions and briefs is subject to the provisions of paragraph (j) of this section. Requests for extension of time to file exceptions or briefs shall be in writing and copies thereof shall be served promptly on the other parties. Such requests must be received by the Board 3 days prior to the due date.

* * * * *

(d)(1) Within 10 days, or such further period as the Board may allow, from the last date on which exceptions and any supporting brief may be filed, a party opposing the exceptions may file an answering brief to the exceptions, in accordance with the provisions of paragraph (j) of this section. The provision for 3 additional days as contained in § 102.114 shall be applicable to this subsection.

* * * * *

(e) Any party who has not previously filed exceptions may, within 10 days, or such further period as the Board may allow, from the last date on which exceptions and any supporting brief may be filed, file cross-exceptions to any portion of the administrative law judge's decision, together with a supporting brief, in accordance with the provisions of paragraphs (b) and (j) of this section. The provision for 3 additional days as contained in § 102.114 shall be applicable to this paragraph.

(f)(1) Within 10 days, or such further period as the Board may allow, from the last date on which cross-exceptions and any supporting brief may be filed, any other party may file an answering brief to such cross-exceptions in accordance with the provisions of paragraphs (c) and (j) of this section. Such answering brief shall be limited to the questions raised in the cross-exceptions. The provision for 3 additional days as contained in § 102.114 shall be applicable to this subsection.

* * * * *

§ 102.47 Filing of motion after transfer of case to Board.

All motions filed after the case has been transferred to the Board pursuant to § 102.45 shall be filed with the Board in Washington, D.C., by transmitting eight copies thereof, together with an affidavit of service on the parties. Such motions shall be printed or otherwise legibly duplicated: *Provided, however,* That carbon copies of typewritten matter shall not be filed and if submitted will not be accepted.

[29 FR 15919, Nov. 28, 1964]

PROCEDURE BEFORE THE BOARD

§ 102.48 Action of the Board upon expiration of time to file exceptions to the administrative law judge's decision; decisions by the Board; extraordinary postdecisional motions.

(a) In the event no timely or proper exceptions are filed as herein provided, the findings, conclusions, and recommendations of the administrative law judge as contained in his decision shall, pursuant to section 10(c) of the Act, automatically become the decision and order of the Board and become its findings, conclusions, and order, and all objections and exceptions thereto shall be deemed waived for all purposes.

(b) Upon the filing of timely and proper exceptions, and any cross-exceptions, or answering briefs, as provided in § 102.46, the Board may decide the matter forthwith upon the record, or after oral argument, or may reopen the record and receive further evidence before a member of the Board or other Board agent or agency, or may make other disposition of the case.

(c) Where exception is taken to a factual finding of the administrative law judge, the Board, in determining whether the finding is contrary to a preponderance of the evidence, may limit its consideration to such portions of the record as are specified in the exceptions, the supporting brief, and the answering brief.

(d)(1) A party to a proceeding before the Board may, because of extraordinary circumstances, move for reconsideration, rehearing, or reopening of the record after the Board decision or order. A motion for reconsideration shall state with particularity the material error claimed and with respect to any finding of material fact shall specify the page of the record relied on. A motion for rehearing shall specify the error alleged to require a hearing *de novo* and the prejudice to the movant alleged to result from such error. A motion to reopen the record shall state briefly the additional evidence sought to be adduced, why it was not presented previously, and that, if adduced and credited, it would require a different result. Only newly discovered evidence, evidence which has become available only since the close of the hearing, or evidence which the Board believes should have been taken at the hearing will be taken at any further hearing.

(2) Any motion pursuant to this subsection shall be filed within 28 days, or such further period as the Board may allow, after the service of the Board's decision or order, except that a motion for leave to adduce additional evidence shall be filed promptly on discovery of such evidence. Any request for an extension of time must be received by the Board 3 days prior to the due date and copies thereof shall be served promptly on the other parties.

(3) The filing and pendency of a motion under this provision shall not operate to stay the effectiveness of the action of the Board unless so ordered. A motion for reconsideration or for rehearing need not be filed to exhaust administrative remedies.

[28 FR 7974, Aug. 6, 1963, as amended at 34 FR 14432, Sept. 16, 1969; 51 FR 23746, July 1, 1986]

EFFECTIVE DATE NOTE: 29 CFR 102.48(d) was revised at 51 FR 23746, July 1, 1986. This revision becomes effective on September 29, 1986. For the convenience of the user, the superseded text reads as follows:

§ 102.48 Action of Board upon expiration of time to file exceptions to administrative law judge's decision; decisions by the Board; extraordinary postdecisional motions.

* * * * *

(d)(1) A party to a proceeding before the Board may, because of extraordinary circumstances, move for reconsideration, rehearing, or reopening of the record after the Board decision or order. A motion for reconsideration shall state with particularity the material error claimed and with respect to any finding of material fact shall specify the page of the record relied on. A motion for rehearing shall specify the error alleged to require a hearing de novo and the prejudice to the movant alleged to result from such error. A motion to reopen the record shall state briefly the additional evidence sought to be adduced, why it was not presented previously, and that, if adduced and credited, it would require a different result. Only newly discovered evidence, evidence which has become available only since the close of the hearing, or evidence which the Board believes should have been taken at the hearing will be taken at any further hearing.

(2) Any motion pursuant to this subsection shall be filed within 20 days, or such further period as the Board may allow, after the service of its decision or order, except that a motion for leave to adduce additional evidence shall be filed promptly upon discovery of such evidence.

(3) The filing and pendency of a motion under this provision shall not operate to stay the effectiveness of the action of the Board unless so ordered. A motion for reconsideration or rehearing need not be filed to exhaust administrative remedies.

§ 102.49 Modification or setting aside of order of Board before record filed in court; action thereafter.

Within the limitations of the provisions of section 10(c) of the Act, and § 102.48, until a transcript of the record in a case shall have been filed in a court, within the meaning of section 10 of the Act, the Board may at any time upon reasonable notice modify or set aside, in whole or in part, any findings of fact, conclusions of law, or order made or issued by it. Thereafter, the Board may proceed pursuant to § 102.50, insofar as applicable.

§ 102.50 Hearings before Board or member thereof.

Whenever the Board deems it necessary in order to effectuate the purpose of the act or to avoid unnnecessary costs or delay, it may, at any time after a complaint has issued pursuant to § 102.15 or § 102.33, order that such complaint and any proceeding which may have been instituted with respect thereto be transferred to and continued before it or any member of the Board. The provisions of this subpart shall, insofar as applicable, govern proceedings before the Board or any member pursuant to this section, and the powers granted to administrative law judges in such provisions shall, for the purpose of this section, be reserved to and exercised by the Board or the member thereof who shall preside.

§ 102.51 Settlement or adjustment of issues.

At any stage of a proceeding prior to hearing, where time, the nature of the proceeding, and the public interest permit, all interested parties shall have opportunity to submit to the regional director, with whom the charge was filed, for consideration facts, arguments, offers of settlement, or proposals of adjustment.

BACK-PAY PROCEEDINGS

§ 102.52 Initiation of proceedings; issuance of backpay specification; issuance of notice of hearing without backpay specification.

After the entry of a Board order directing the payment of backpay or the entry of a court enforcing such a Board order, if it appears to the regional director that a controversy exists between the Board and a respondent concerning the amount of backpay due which cannot be resolved without a formal proceeding, the regional director may issue and serve on all parties a backpay specification in the name of the Board. The specification shall contain or be accompanied by a notice of hearing before an ad-

ministrative law judge at a place therein fixed and at a time not less than 21 days after the service of the specification. In the alternative and at this discretion, the regional director may, under the circumstances specified above, issue and serve on the parties a notice of hearing only, without the backpay specification, the hearing to be held before an administrative law judge, at a place therein fixed and at a time not less than 21 days after the service of the notice of hearing.

[51 FR 23747, July 1, 1986]

EFFECTIVE DATE NOTE: 29 CFR 102.52 was revised at 51 FR 23747, July 1, 1986. This revision becomes effective on September 29, 1986. For the convenience of the user, the superseded text reads as follows:

§ 102.52 Initiation of proceedings; issuance of back-pay specification; issuance of notice of hearing without back-pay specification.

After the entry of a Board order directing the payment of back pay or the entry of a court decree enforcing such a Board order, if it appears to the regional director that a controversy exists between the Board and a respondent concerning the amount of back pay due which cannot be resolved without a formal proceeding, the regional director may issue and serve upon all parties a back-pay specification in the name of the Board. The specification shall contain or be accompanied by a notice of hearing before an administrative law judge at a place therein fixed and at a time not less than 15 days after the service of the specification. In the alternative and at his discretion, the regional director, may under the circumstances specified above, issue and serve upon the parties a notice of hearing only, without the back-pay specification, the hearing to be held before an administrative law judge, at a place therein fixed and at a time not less than 15 days after the service of the notice of hearing.

[27 FR 2092, Mar. 3, 1962]

§ 102.53 Contents of back-pay specifications and of notice of hearing without specification.

(a) *Contents of back-pay specification.* Where the specification procedure is used, the specification shall specifically and in detail show, for each employee, the back-pay periods broken down by calendar quarters, and specific figures and basis of computation as to gross back pay and interim earnings, the expenses for each quarter, the net back pay due, and any other pertinent information.

(b) *Contents of notice of hearing without specification.* The notice of hearing without specification shall contain, in addition to the time and place of hearing before an administrative law judge, a brief statement of the matters in controversy.

[27 FR 2092, Mar. 3, 1962]

§ 102.54 Answer to specification; no requirement for answer to notice of hearing issued without backpay specification.

(a) *Filing and service of answer to specification.*—The respondent shall, within 21 days from the service of the specification, if any, file an answer thereto; an original and four copies shall be filed with the regional director issuing the specification, and a copy thereof shall immediately be served on any other respondent jointly liable.

(b) *Contents of the answer to specification.* The answer to the specification shall be in writing, the original being signed and sworn to by the respondent or by a fuly authorized agent with appropriate power of attorney affixed, and shall contain the post office address of the respondent. The respondent shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification denied. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross back pay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, he shall specifically state the basis for his disagreement, setting forth in detail his position as to the applicable premises

and furnishing the appropriate supporting figures.

(c) *Effect of failure to answer or to plead specifically and in detail to the specification.* If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting said allegation.

(d) *Answer to the notice of hearing issued without back-pay specification.* No answer need be filed by respondent to notice of hearing issued without a specification.

[27 FR 2092, Mar. 3, 1962; as amended at 51 FR 23747, July 1, 1986]

EFFECTIVE DATE NOTE: 29 CFR 102.54(a) was revised at 51 FR 23747, July 1, 1986. This revision becomes effective on September 29, 1986. For the convenience of the user, the superseded text reads as follows:

§ 102.54 Answer to specification; no requirement for answer to notice of hearing issued without back-pay specification.

(a) *Filing and service of answer to specification.* The respondent shall, within 15 days from the service of the specification, if any, file an answer thereto; an original and four copies shall be filed with the regional director issuing the specification, and a copy thereof shall immediately be served on any other respondent jointly liable.

* * * * *

§ 102.55 Extension of time for filing answer to specification.

Upon his motion or upon proper cause shown by any respondent, the regional director issuing the specification may by written order extend the time within which the answer to the specification shall be filed.

[27 FR 2092, Mar. 3, 1962]

§ 102.56 Extension of date of hearing.

Upon his own motion or upon proper cause shown, the regional director issuing the specification or notice of hearing without specification may extend the date of hearing.

[27 FR 2092, Mar. 3, 1962]

§ 102.57 Amendment to back-pay specification.

After the issuance of the notice of hearing, but prior to the opening thereof, the regional director may amend the back-pay specification and the respondent affected thereby may amend his answer thereto. After the opening of the hearing, the specification and the answer thereto may be amended upon leave of the administrative law judge or of the Board, as the case may be, good cause therefor appearing.

[27 FR 2092, Mar. 3, 1962]

§ 102.58 Withdrawal.

Any such specification or notice of hearing without specification may be withdrawn before the hearing by the regional director on his own motion.

[27 FR 2092, Mar. 3, 1962]

§ 102.59 Hearing; posthearing procedure.

After the issuance of a notice of hearing with or without back-pay specification, the procedures provided in §§ 102.24 to 102.51, shall be followed insofar as applicable.

[27 FR 2092, Mar. 3, 1962]

Subpart C—Procedure Under Section 9(c) of the Act for the Determination of Questions Concerning Representation of Employees[3] and for Clarification of Bargaining Units and for Amendment of Certifications Under Section 9(b) of the Act

§ 102.60 Petitions.

(a) *Petition for certification or decertification; who may file; where to file; withdrawal.* A petition for investigation of a question concerning representation of employees under paragraphs (1)(A)(i) and (1)(B) of section 9(c) of the Act (hereinafter called a petition for certification) may be filed by an employee or group of employees or any individual or labor organization acting in their behalf or by an employer. A petition under paragraph (1)(A)(ii) of section 9(c) of the Act, alleging that the individual or labor organization which has been certified or is being currently recognized as the bargaining representative is no longer such representative (hereinafter called a petition for decertification), may be filed by any employee or group of employees or any individual or labor organization acting in their behalf. Petitions under this section shall be in writing and signed,[4] and either shall be sworn to before a notary public, Board agent, or other person duly authorized by law to administer oaths and take acknowledgments or shall contain a declaration by the person signing it, under the penalties of the Criminal Code, that its contents are true and correct to the best of his knowledge and belief. Four copies of the petition shall be filed. Except as provided in § 102.72, such petitions shall be filed with the regional director for the regions wherein the bargaining unit exists, or, if the bargaining unit exists in two or more regions, with the regional director for any such regions. Prior to the transfer of the case to the Board, pursuant to § 102.67, the petition may be withdrawn only with the consent of the regional director with whom such petition was filed. After the transfer of the case to the Board, the petition may be withdrawn only with the consent of the Board. Whenever the regional director or the Board, as the case may be, approves the withdrawal of any petition, the case shall be closed.

(b) *Petition for clarification of bargaining unit or petition for amendment of certification under section 9(b) of the Act; who may file; where to file; withdrawal.* A petition for clarification of an existing bargaining unit or a petition for amendment of certification, in the absence of a question concerning representation, may be filed by a labor organization or by an employer. Where applicable the same procedures set forth in paragraph (a) of this section shall be followed.

[29 FR 15919, Nov. 28, 1964]

§ 102.61 Contents of petition for certification; contents of petition for decertification; contents of petition for clarification of bargaining unit; contents of petition for amendment of certification.

(a) A petition for certification, when filed by an employee or group of employees or an individual or labor organization acting in their behalf, shall contain the following:

(1) The name of the employer.

(2) The address of the establishments involved.

(3) The general nature of the employer's business.

(4) A description of the bargaining unit which the petitioner claims to be appropriate.

(5) The names and addresses of any other persons or labor organizations who claim to represent any employees in the alleged appropriate unit, and brief descriptions of the contracts, if any, covering the employees in such unit.

(6) The number of employees in the alleged appropriate unit.

(7) A statement that the employer declines to recognize the petitioner as the representative within the meaning of section 9(a) of the Act or that the

[3] Procedure under the first proviso to sec. 8(b)(7)(C) of the Act is governed by Subpart D.

[4] Blank forms for filing such petitions will be supplied by the regional office upon request.

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labor organization is currently recognized but desires certification under the act.

(8) The name, affiliation, if any, and address of the petitioner.

(9) Whether a strike or picketing is in progress at the establishment involved and, if so, the approximate number of employees participating, and the date such strike or picketing commenced.

(10) Any other relevant facts.

(b) A petition for certification, when filed by an employer, shall contain the following:

(1) The name and address of the petitioner.

(2) The general nature of the petitioner's business.

(3) A brief statement setting forth that one or more individuals or labor organizations have presented to the petitioner a claim to be recognized as the exclusive representative of all employees in the unit claimed to be appropriate; a description of such unit; and the number of employees in the unit.

(4) The name or names, affiliation, if any, and addresses of the individuals or labor organizations making such claim for recognition.

(5) A statement whether the petitioner has contracts with any labor organization or other representatives of employees and, if so, their expiration date.

(6) Whether a strike or picketing is in progress at the establishment involved and, if so, the approximate number of employees participating, and the date such strike or picketing commenced.

(7) Any other relevant facts.

(c) Petitions for decertification shall contain the following:

(1) The name of the employer.

(2) The address of the establishments and a description of the bargaining unit involved.

(3) The general nature of the employer's business.

(4) Name and address of the petitioner and affiliation, if any.

(5) Name or names of the individuals or labor organizations who have been certified or are being currently recognized by the employer and who claim to represent any employees in the unit involved, and the expiration date of any contracts covering such employees.

(6) An allegation that the individuals or labor organizations who have been certified or are currently recognized by the employer are no longer the representative in the appropriate unit as defined in section 9(a) of the Act.

(7) The number of employees in the unit.

(8) Whether a strike or picketing is in progress at the establishment involved and, if so, the approximate number of employees participating, and the date such strike or picketing commenced.

(9) Any other relevant facts.

(d) A petition for clarification shall contain the following:

(1) The name of the employer and the name of the recognized or certified bargaining representative.

(2) The address of the establishment involved.

(3) The general nature of the employer's business.

(4) A description of the present bargaining unit, and, if the bargaining unit is certified, an identification of the existing certification.

(5) A description of the proposed clarification.

(6) The names and addresses of any other persons or labor organizations who claim to represent any employees affected by the proposed clarifications, and brief descriptions of the contracts, if any, covering any such employees.

(7) The number of employees in the present bargaining unit and in the unit as proposed under the clarification.

(8) The job classifications of employees as to whom the issue is raised, and the number of employees in each classification.

(9) A statement by petitioner setting forth reasons why petitioner desires clarification of unit.

(10) The name, the affiliation, if any, and the address of the petitioner.

(11) Any other relevant facts.

(e) A petition for amendment of certification shall contain the following:

(1) The name of the employer and the name of the certified union involved.

(2) The address of the establishment involved.

(3) The general nature of the employer's business.

(4) Identification and description of the existing certification.

(5) A statement by petitioner setting forth the details of the desired amendment and reasons therefor.

(6) The names and addresses of any other persons or labor organizations who claim to represent any employees in the unit covered by the certification and brief descriptions of the contracts, if any, covering the employees in such unit.

(7) The name, the affiliation, if any, and the address of the petitioner.

(8) Any other relevant facts.

[26 FR 3887, May 4, 1961, as amended at 29 FR 15919, Nov. 28, 1964]

§ 102.62 Consent-election agreements.

(a) Where a petition has been duly filed, the employer and any individuals or labor organizations representing a substantial number of employees involved may, with the approval of the regional director, enter into a consent-election agreement leading to a determination by the regional director of the facts ascertained after such consent election. Such agreement shall include a description of the appropriate unit, the time and place of holding the election, and the payroll period to be used in determining what employees within the appropriate unit shall be eligible to vote. Such consent election shall be conducted under the direction and supervision of the regional director. The method of conducting such consent election shall be consistent with the method followed by the regional director in conducting elections pursuant to §§ 102.69 and 102.70 except that the rulings and determinations by the regional director of the results thereof shall be final, and the regional director shall issue to the parties a certification of the results of the election, including certification of representatives where appropriate, with the same force and effect as if issued by the Board, provided further that rulings or determinations by the regional director in respect to any amendment of such certification shall also be final.

(b) Where a petition has been duly filed, the employer and any individuals or labor organizations representing a substantial number of the employees involved may, with the approval of the regional director, enter into an agreement providing for a waiver of hearing and a consent election leading to a determination by the Board of the facts ascertained after such consent election, if such a determination is necessary. Such agreement shall also include a description of the appropriate bargaining unit, the time and place of holding the election, and the payroll period to be used in determining which employees within the appropriate unit shall be eligible to vote. Such consent election shall be conducted under the direction and supervision of the regional director. The method of conducting such election and the post election procedure shall be consistent with that followed by the regional director in conducting elections pursuant to §§ 102.69 and 102.70.

[26 FR 3887, May 4, 1961]

§ 102.63 Investigation of petition by regional director; notice of hearing; service of notice; withdrawal of notice.

(a) After a petition has been filed under § 102.61 (a), (b), or (c), if no agreement such as that provided in § 102.62 is entered into and if it appears to the regional director that there is reasonable cause to believe that a question of representation affecting commerce exists, that the policies of the act will be effectuated, and that an election will reflect the free choice of employees in the appropriate unit, the Regional Director shall prepare and cause to be served upon the parties and upon any known individuals or labor organizations purporting to act as representatives of any employees directly affected by such investigation, a notice of hearing before a hearing officer at a time and place fixed therein. A copy of the petition shall be served with such notice of hearing. Any such notice of hearing may be amended or withdrawn before

the close of the hearing by the regional director on his own motion.

(b) After a petition has been filed under § 102.61(d) or (e), the regional director shall conduct an investigation and, as appropriate, he may issue a decision without a hearing; or prepare and cause to be served upon the parties and upon any known individuals or labor organizations purporting to act as representatives of any employees directly affected by such investigation, a notice of hearing before a hearing officer at a time and place fixed therein; or take other appropriate action. If a notice of hearing is served, it shall be accompanied by a copy of the petition. Any such notice of hearing may be amended or withdrawn before the close of the hearing by the regional director on his own motion. All hearing and posthearing procedure under this paragraph (b) shall be in conformance with §§ 102.64 through 102.68 whenever applicable, except where the unit or certification involved arises out of an agreement as provided in § 102.62(a), the regional director's action shall be final, and the provisions for review of regional director's decisions by the Board shall not apply. Dismissals of petitions without a hearing shall not be governed by § 102.71. The regional director's dismissal shall be by decision, and a request for review therefrom may be obtained under § 102.67, except where an agreement under § 102.62(a) is involved.

[29 FR 15919, Nov. 28, 1964]

§ 102.64 Conduct of hearing.

(a) Hearings shall be conducted by a hearing officer and shall be open to the public unless otherwise ordered by the hearing officer. At any time, a hearing officer may be substituted for the hearing officer previously presiding. It shall be the duty of the hearing officer to inquire fully into all matters and issues necessary to obtain a full and complete record upon which the Board or the regional director may discharge *their* duties under section 9(c) of the Act.

(b) The hearing officer may, in his discretion, continue the hearing from day to day, or adjourn it to a later date or to a different place, by announcement thereof at the hearing or by other appropriate notice.

[26 FR 3888, May 4, 1961]

§ 102.65 Motions; interventions.

(a) All motions, including motions for intervention pursuant to paragraphs (b) and (e) of this section, shall be in writing or, if made at the hearing, may be stated orally on the record and shall briefly state the order or relief sought and the grounds for such motion. An original and two copies of written motions shall be filed and a copy thereof immediately shall be served on the other parties to the proceeding. Motions made prior to the transfer of the case to the Board shall be filed with the regional director, except that motions made during the hearing shall be filed with the hearing officer. After the transfer of the case to the Board, all motions shall be filed with the Board. Such motions shall be printed or otherwise legibly duplicated: *Provided, however,* That carbon copies of typewritten matter shall not be filed and if submitted will not be accepted. Eight copies of such motions shall be filed with the Board. The regional director may rule upon all motions filed with him, causing a copy of said ruling to be served on the parties, or he may refer the motion to the hearing officer: *Provided,* That if the regional director prior to the close of the hearing grants a motion to dismiss the petition, the petitioner may obtain a review of such ruling in the manner prescribed in § 102.71. The hearing officer shall rule, either orally on the record or in writing, upon all motions filed at the hearing or referred to him as hereinabove provided, except that all motions to dismiss petitions shall be referred for appropriate action at such time as the entire record is considered by the regional director or the Board, as the case may be.

(b) Any person desiring to intervene in any proceeding shall make a motion for intervention, stating the grounds upon which such person claims to have an interest in the proceeding. The regional director or the hearing officer, as the case may be, may by order permit intervention in person or by counsel or other representative to

such extent and upon such terms as he may deem proper, and such intervenor shall thereupon become a party to the proceeding.

(c) All motions, rulings, and orders shall become a part of the record, except that rulings on motions to revoke subpenas shall become a part of the record only upon the request of the party aggrieved thereby as provided in § 102.66(c). Unless expressly authorized by the Rules and Regulations, rulings by the regional director or by the hearing officer shall not be appealed directly to the Board, but shall be considered by the Board on appropriate appeal pursuant to § 102.67 (b), (c), and (d) or whenever the case is transferred to it for decision: *Provided, however,* That if the regional director has issued an order transferring the case to the Board for decision such rulings may be appealed directly to the Board by special permission of the Board. Nor shall rulings by the hearing officer be appealed directly to the regional director unless expressly authorized by the Rules and Regulations, except by special permission of the regional director, but shall be considered by the regional director when he reviews the entire record. Requests to the regional director, or to the Board in appropriate cases, for special permission to appeal from a ruling of the hearing officer, together with the appeal from such ruling, shall be filed promptly, in writing, and shall briefly state (1) the reasons special permission should be granted and (2) the grounds relied on for the appeal. The moving party shall immediately serve a copy of the request for special permission and of the appeal on the other parties and on the regional director. Any statement in opposition or other response to the request and/or to the appeal shall be filed promptly, in writing, and shall be served immediately on the other parties and on the regional director. If the Board or the regional director, as the case may be, grants the request for special permission to appeal, the Board or the regional director may proceed forthwith to rule on the appeal.

(d) The right to make motions or to make objections to rulings on motions shall not be deemed waived by participation in the proceeding.

(e)(1) A party to a proceeding may, because of extraordinary circumstances, move after the close of the hearing for reopening of the record, or move after the decision or report for reconsideration, for rehearing, or to reopen the record, but no such motion shall stay the time for filing a request for review of a decision or exceptions to a report. No motion for reconsideration, for rehearing, or to reopen the record will be entertained by the Board or by any regional director with respect to any matter which could have been but was not raised pursuant to any other section of these rules: *Provided, however,* That the regional director may treat a request for review of a decision or exceptions to a report as a motion for reconsideration. A motion for reconsideration shall state with particularity the material error claimed and with respect to any finding of material fact shall specify the page of the record relied on for the motion. A motion for rehearing or to reopen the record shall specify briefly the error alleged to require a rehearing or hearing *de novo,* the prejudice to the movant alleged to result from such error, the additional evidence sought to be adduced, why it was not presented previously, and what result it would require if adduced and credited. Only newly discovered evidence—evidence which has become available only since the close of the hearing—or evidence which the regional director or the Board believes should have been taken at the hearing will be taken at any further hearing.

(2) Any motion for reconsideration or for rehearing pursuant to this subsection shall be filed within 14 days, or such further period as may be allowed, after the service of the decision or report. Any request for an extension of time of file such a motion must be received 3 days prior to the due date and copies thereof shall be served promptly on the other parties. A motion to reopen the record shall be filed promptly on discovery of the evidence sought to be adduced.

(3) The filing and pendency of a motion under this provision shall not unless so ordered operate to stay the

effectiveness of any action taken or directed to be taken, except that, if the motion states with particularity that the granting thereof will affect the eligibility to vote of specific employees, the ballots of such employees shall be challenged and impounded in any election conducted while such motion is pending. A motion for reconsideration, for rehearing, or to reopen the record need not be filed to exhaust administrative remedies.

[26 FR 3888, May 4, 1961, as amended at 36 FR 9133, May 20, 1971; 47 FR 40771, Sept. 15, 1982; 51 FR 23747, July 1, 1986]

EFFECTIVE DATE NOTE: 29 CFR 102.65(e)(2) was revised at 51 FR 23747, July 1, 1986. This revision becomes effective on September 29, 1986. For the convenience of the user, the superseded text reads as follows:

§ 102.65 Motions; interventions.

* * * * *

(e) * * *

(2) Any motion for reconsideration or for rehearing pursuant to this subsection shall be filed within 10 days, or such further period as may be allowed, after the service of the decision or report. Any request for an extension of time to file such a motion must be received 3 days prior to the due date and copies thereof shall be served promptly on the other parties. A motion to reopen the record shall be filed promptly on discovery of the evidence sought to be adduced.

* * * * *

§ 102.66 Introduction of evidence: rights of parties at hearing; subpenas.

(a) Any party shall have the right to appear at any hearing in person, by counsel, or by other representative, and any party and the hearing officer shall have power to call, examine, and cross-examine witnesses and to introduce into the record documentary and other evidence. Witnesses shall be examined orally under oath. The rules of evidence prevailing in courts of law or equity shall not be controlling. Stipulations of fact may be introduced in evidence with respect to any issue.

(b) Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, may be stated orally or in writing, accompanied by a short statement of the grounds of such objection, and included in the record. No such objection shall be deemed waived by further participation in the hearing.

(c) Any party may file applications for subpenas in writing with the regional director if made prior to hearing, or with the hearing officer if made at the hearing. Applications for subpenas may be made ex parte. The regional director or the hearing officer, as the case may be, shall forthwith grant the subpenas requested. Any person served with a subpena, whether ad testificandum or duces tecum, if he does not intend to comply with the subpena, shall, within 5 days after the date of service of the subpena, petition in writing to revoke the subpena. Such petition shall be filed with the regional director who may either rules upon it or refer it for ruling to the hearing officer: *Provided, however,* That if the evidence called for is to be produced at a hearing and the hearing has opened, the petition to revoke shall be filed with the hearing officer. Notice of the filing of petitions to revoke shall be promptly given by the regional director or hearing officer, as the case may be, to the party at whose request the subpena was issued. The regional director or the hearing officer, as the case may be, shall revoke the subpena if, in his opinion, the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the subpena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpena is otherwise invalid. The regional director or the hearing officer, as the case may be, shall make a simple statement of procedural or other grounds for his ruling. The petition to revoke, any answer filed thereto, and any ruling thereon shall not become part of the record except upon the request of the party aggrieved by the ruling. Persons compelled to submit data or evidence are entitled to retain or, on payment of lawfully prescribed costs, to procure copies or transcripts of the data or evidence submitted by them.

(d)(1) Misconduct at any hearing before a hearing officer or before the regional director or the Board shall be

ground for summary exclusion from the hearing.

(2) Such misconduct of an aggravated character, when engaged in by an attorney or other representative of a party, shall be ground for suspension or disbarment by the Board from further practice before it after due notice and hearing.

(3) The refusal of a witness at any such hearing to answer any question which has been rules to be proper shall, in the discretion of the hearing officer, be ground for striking all testimony previously given by such witness on related matters.

(e) Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing.

(f) The hearing officer may submit an analysis of the record to the regional director or the Board but he shall make no recommendations.

(g) Witness fees and mileage shall be paid by the party at whose instance the witness appears.

[26 FR 3888, May 4, 1961]

§ 102.67 Proceedings before the regional director; further hearing; briefs; action by the regional director; appeals from action by the regional director; statement in opposition to appeal; transfer of case to the Board; proceedings before the Board; Board action.

(a) The regional director may proceed, either forthwith upon the record or after oral argument, the submission of briefs, or further hearing, as he may deem proper, to determine the unit appropriate for the purpose of collective bargaining, to determine whether a question concerning representation exists, and to direct an election, dismiss the petition, or make other disposition of the matter. Any party desiring to submit a brief to the regional director shall file the original and one copy thereof, which may be a typed carbon copy, within 7 days after the close of the hearing: *Provided, however,* That prior to the close of the hearing and for good cause the hearing officer may grant an extension of time not to exceed an additional 14 days. Copies of the brief shall be served on all other parties to the proceeding and a statement of such service shall be filed with the regional director together with the brief. No reply brief may be filed except upon special leave of the regional director.

(b) A decision by the regional director upon the record shall set forth his findings, conclusions, and order or direction. The decision of the regional director shall be final: *Provided, however,* That within 14 days after service thereof any party may file a request for review with the Board in Washington, D.C. The regional director shall schedule and conduct any election directed by the decision notwithstanding that a request for review has been filed with or granted by the Board. The filing of such a request shall not, unless otherwise ordered by the Board, operate as a stay of the election or any action taken or directed by the regional director: *Provided, however,* That if a pending request for review has not been ruled upon or has been granted ballots whose validity might be affected by the final Board decision shall be segregated in an appropriate manner, and all ballots shall be impounded and remain unopened pending such decision.

(c) The Board will grant a request for review only where compelling reasons exist therefor. Accordingly, a request for review may be granted only upon one or more of the following grounds:

(1) That a substantial question of law or policy is raised because of (i) the absence of, or (ii) a departure from, officially reported Board precedent.

(2) That the regional director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party.

(3) That the conduct of the hearing or any ruling made in connection with the proceeding has resulted in prejudicial error.

(4) That there are compelling reasons for reconsideration of an important Board rule or policy.

(d) Any request for review must be a self-contained document enabling the Board to rule on the basis of its contents without the necessity or recourse to the record; however, the Board

may, in its discretion, examine the record in evaluating the request. With respect to ground (2), and other grounds where appropriate, said request must contain a summary of all evidence or rulings bearing on the issues together with page citations from the transcript and a summary of argument. But such request may not raise any issue or allege any facts not timely presented to the regional director.

(e) Any party may, within 7 days after the last day on which the request for review must be filed, file with the Board a statement in opposition thereto, which shall be served in accordance with the requirements of paragraph (k) of this section. A statement of such service of opposition shall be filed simultaneously with the Board. The Board may deny the request for review without awaiting a statement in opposition thereto.

(f) The parties may, at any time, waive their right to request review. Failure to request review shall preclude such parties from relitigating, in any related subsequent unfair labor practice proceeding, any issue which was, or could have been, raised in the representation proceeding. Denial of a request for review shall constitute an affirmance of the regional director's action which shall also preclude relitigating any such issues in any related subsequent unfair labor practice proceeding.

(g) The granting of a request for review shall not stay the regional director's decision unless otherwise ordered by the Board. Except where the Board rules upon the issues on review in the order granting review, the appellants and other parties may, within 14 days after issuance of an order granting review, file briefs with the Board. Such briefs may be reproductions of those previously filed with the regional director and/or other briefs which shall be limited to the issues raised in the request for review. Where review has been granted, the Board will consider the entire record in the light of the grounds relied on for review. Any request for review may be withdrawn with the permission of the Board at any time prior to the issuance of the decision of the Board thereon.

(h) In any case in which it appears to the regional director that the proceeding raises questions which should be decided by the Board, he may, at any time, issue an order, to be effective after the close of the hearing and before decision, transferring the case to the Board for decision. Such an order may be served on the parties upon the record of the hearing.

(i) If any case is transferred to the Board for decision after the parties have filed briefs with the regional director, the parties may, within such time after service of the order transferring the case as is fixed by the regional director, file with the Board the brief previously filed with the regional director. No further briefs shall be permitted except by special permission of the Board. If the case is transferred to the Board before the time expires for the filing of briefs with the regional director and before the parties have filed briefs, such briefs shall be filed as set forth above and served in accordance with the requirements of paragraph (k) of this section within the time set by the regional director. If the order transferring the case is served on the parties during the hearing, the hearing officer may, prior to the close of the hearing and for good cause, grant an extension of time within which to file a brief with the Board for a period not to exceed an additional 14 days. No reply brief may be filed except upon special leave of the Board.

(j) Upon transfer of the case to the Board, the Board shall proceed, either forthwith upon the record, or after oral argument or the submission of briefs, or further hearing, as it may determine, to decide the issues referred to it or to review the decision of the regional director and shall direct a secret ballot of the employees or the appropriate action to be taken on impounded ballots of an election already conducted, dismiss the petition, affirm or reverse the regional director's order in whole or in part, or make such other disposition of the matter as it deems appropriate.

(k)(1) All documents filed with the Board under the provisions of this sec-

tion shall be filed in eight copies, double spaced, on 8½- by 11-inch paper, and shall be printed or otherwise legibly duplicated. Carbon copies of typewritten materials will not be accepted. Requests for review, including briefs in support thereof; statements in opposition thereto; and briefs on review shall not exceed 50 pages in length, exclusive of subject index and table of cases and other authorities cited, unless permission to exceed that limit is obtained from the Board by motion, setting forth the reasons therefor, filed not less than 5 days, including Saturdays, Sundays, and holidays, prior to the date the document is due. Where any brief filed pursuant to this section exceeds 20 pages, it shall contain a subject index with page authorities cited.

(2) The party filing with the Board a request for review, a statement in opposition to a request for review, or a brief on review shall serve a copy thereof on the other parties and shall file a copy with the regional director. A statement of such service shall be filed with the Board together with the document.

(3) Requests for extensions of time to file requests for review, statements in opposition to a request for review, or briefs, as permitted by this section, shall be filed with the Board or the regional director, as the case may be, not less than 3 days before the date the brief or other document is due. The party filing the request for an extension of time shall serve a copy thereof on the other parties and, if filed with the Board, on the regional director. A statement of such service shall be filed with the document.

[26 FR 3889, May 4, 1961, as amended at 42 FR 41117, Aug. 15, 1977; 47 FR 40771, Sept. 15, 1982; 51 FR 23747, July 1, 1986]

EFFECTIVE DATE NOTE: 29 CFR 102.67(b), (e), and (g) were revised at 51 FR 23747, July 1, 1986. This revision becomes effective on September 29, 1986. For the convenience of the user, the superseded text reads as follows:

§ 102.67 Proceedings before the regional director; further hearing; briefs; action by the regional director; appeals from action by the regional director; statement in opposition to appeal; transfer of case to Board; proceedings before the Board; Board action.

* * * * *

(b) A decision by the regional director upon the record shall set forth his findings, conclusions, and order or direction. The decision of the regional director shall be final: *Provided, however,* That within 10 days after service thereof any party may file a request for review with the Board in Washington, D.C. The regional director shall schedule and conduct any election directed by the decision notwithstanding that a request for review has been filed with or granted by the Board. The filing of such a request shall not, unless otherwise ordered by the Board, operate as a stay of the election or any other action taken or directed by the regional director: *Provided, however,* That if a pending request for review has not been ruled upon or has been granted ballots whose validity might be affected by the final Board decision shall be segregated in an appropriate manner, and all ballots shall be impounded and remain unopened pending such decision.

* * * * *

(e) Any party may, within 7 days after the last day on which the request for review must be filed, file with the Board a statement in opposition thereto, which shall be served in accordance with the requirements of paragraph (k) of this section; except that, if personal service of the request for review is made upon the Board, 10 days will be allowed. However, 3 days will not be added to either of the aforesaid prescribed periods as provided in § 102.114. The Board may deny the request for review without awaiting a statement in opposition thereto.

* * * * *

(g) The granting of a request for review shall not stay the regional director's decision unless otherwise ordered by the Board. Except where the Board rules upon the issues on review in the order granting review, the appellants and other parties may, within 7 days after issuance of an order granting review, file briefs with the Board. Such briefs may be reproductions of those previously filed with the regional director and/or other briefs which shall be limited to the issues raised in the request for review. Where review has been granted, the Board will consider the entire record in the light of the grounds relied on for

review. Any request for review may be withdrawn with the permission of the Board at any time prior to the issuance of the decision of the Board thereon.

* * * * *

§ 102.68 Record; what constitutes; transmission to Board.

The record in a proceeding conducted pursuant to the foregoing section shall consist of: the petition, notice of hearing with affidavit of service thereof, motions, rulings, orders, the stenographic report of the hearing and of any oral argument before the regional director, stipulations, exhibits, affidavits of service, and any briefs or other legal memoranda submitted by the parties to the regional director or to the Board, and the decision of the regional director, if any. Immediately upon issuance by the regional director of an order transferring the case to the Board, or upon issuance of an order granting a request for review by the Board, the regional director shall transmit the record to the Board.

[46 FR 45922, Sept. 15, 1981]

§ 102.69 Election procedure; tally of ballots; objections; certification by the regional director; report on challenged ballots; report on objections; exceptions; action of the Board; hearing.

(a) Unless otherwise directed by the Board, all elections shall be conducted under the supervision of the regional director in whose region the proceeding is pending. All elections shall be by secret ballot. Whenever two or more labor organizations are included as choices in an election, either participant may, upon its prompt request to and approval thereof by the regional director, whose decision shall be final, have its name removed from the ballot: *Provided, however,* That in a proceeding involving an employer-filed petition or a petition for decertification the labor organization certified, currently recognized, or found to be seeking recognition may not have its name removed from the ballot without giving timely notice in writing to all parties and the regional director, disclaiming any representation interest among the employees in the unit. Any party may be represented by observers of his own selection, subject to such limitations as the regional director may prescribe. Any party and Board agents may challenge, for good cause, the eligibility of any person to participate in the election. The ballots of such challenged persons shall be impounded. Upon the conclusion of the election the ballots will be counted and a tally of ballots prepared and immediately made available to the parties. Within 7 days after the tally of ballots has been prepared, any party may file with the regional director an original and five copies of objections to the conduct of the election or to conduct affecting the results of the election, which shall contain a short statement of the reasons therefor. Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the results of the election. The regional director will cause a copy of the objections to be served on each of the other parties to the proceeding. Within 7 days after the filing of objections, or such additional time as the regional director may allow, the party filing objections shall furnish to the regional director the evidence available to it to support the objections.

(b) If no objections are filed within the time set forth above, if the challenged ballots are insufficient in number to affect the results of the election, and if no runoff election is to be held pursuant to § 102.70, the regional director shall forthwith issue to the parties a certification of the results of the election, including certification of representative where appropriate, with the same force and effect as if issued by the Board, and the proceeding will thereupon be closed.

(c)(1) If timely objections are filed to the conduct of the election or to conduct affecting the results of the election, or if the challenged ballots are sufficient in number to affect the results of the election, the regional director shall, consistent with the provisions of § 102.69(d), initiate an investigation, as required, of such objections or challenges.

(2) If a consent election has been held pursuant to § 102.62(b), the regional director shall prepare and cause to be served on the parties a report on

challenged ballots or on objections, or on both, including his recommendations, which report, together with the tally of ballots, he shall forward to the Board in Washington, D.C. Within 14 days from the date of issuance of the report on challenged ballots or on objections, or on both, any party may file with the Board in Washington, D.C., exceptions to such report, with supporting documents as permitted by § 102.69(g)(3) and/or a supporting brief if desired. Within 7 days from the last date on which exceptions and any supporting documents and/or supporting brief may be filed, or such further period as the Board may allow, a party opposing the exceptions may file an answering brief, with supporting documents as permitted by § 102.69(g)(3) if desired, with the Board in Washington, D.C. If no exceptions are filed to such report, the Board, upon the expiration of the period for filing such exceptions, may decide the matter forthwith upon the record or may make other disposition of the case. The report on challenged ballots may be consolidated with the report on objections in appropriate cases.

(3) If the election has been conducted pursuant to a direction of election issued following any proceeding under § 102.67, the regional director may (i) issue a report on objections or on challenged ballots, or on both, as in the case of a consent election pursuant to paragraph (b) of § 102.62, or (ii) exercise his authority to decide the case and issue a decision disposing of the issues, and directing appropriate action or certifying the results of the election.

(4) If the regional director issues a report on objections and challenges, the parties shall have the rights set forth in paragraph (c)(2) of this section and in § 102.69(f); if the regional director issues a decision, the parties shall have the rights set forth in § 102.67 to the extent consistent herewith, including the right to submit documents supporting the request for review or opposition thereto as permitted by § 102.69(g)(3).

(d) In issuing a report on objections or challenged ballots, or both, following proceedings under §§ 102.62(b) or 102.67, or in issuing a decision on objections or challenged ballots, or both, following proceedings under § 102.67, the regional director may act on the basis of an administrative investigation or upon the record of a hearing before a hearing officer. Such hearing shall be conducted with respect to those objections or challenges which the regional director concludes raise substantial and material factual issues.

(e) Any hearing pursuant to this section shall be conducted in accordance with the provisions of §§ 102.64, 102.65, and 102.66, insofar as applicable, except that, upon the close of such hearing, the hearing officer shall, if directed by the regional director, prepare and cause to be served on the parties a report resolving questions of credibility and containing findings of fact and recommendations as to the disposition of the issues. In any case in which the regional director has directed that a report be prepared and served, any party may, within 14 days from the date of issuance of such report, file with the regional director the original and one copy, which may be a carbon copy, of exceptions to such report, with supporting brief if desired. A copy of such exceptions, together with a copy of any brief filed, shall immediately be served on the other parties and a statement of service filed with the regional director. Within 7 days from the last date on which exceptions and any supporting brief may be filed, or such further time as the regional director may allow, a party opposing the exceptions may file an answering brief with the regional director. An original and one copy, which may be a carbon copy, shall be submitted. A copy of such answering brief shall immediately be served on the other parties and a statement of service filed with the regional director. If no exceptions are filed to such report, the regional director, upon the expiration of the period for filing such exceptions, may decide the matter forthwith upon the record or may make other disposition of the case.

(f) In a case involving a consent election held pursuant to § 102.62(b), if exceptions are filed, either to the report on challenged ballots or on objections,

or on both if it be a consolidated report, and it appears to the Board that such exceptions do not raise substantial and material issues with respect to the conduct or results of the election, the Board may decide the matter forthwith upon the record or may make other disposition of the case. If it appears to the Board that such exceptions raise substantial and material factual issues, the Board may direct the regional director or other agent of the Board to issue and cause to be served on the parties a notice of hearing on said exceptions before a hearing officer. The hearing shall be conducted in accordance with the provisions of §§ 102.64, 102.65, and 102.66 insofar as applicable. Upon the close of the hearing the agent conducting the hearing, if directed by the Board, shall prepare and cause to be served on the parties a report resolving questions of credibility and containing findings of fact and recommendations to the Board as to the disposition of the challenges or objections, or both if it be a consolidated report. In any case in which the Board has directed that a report be prepared and served, any party may within 14 days from the date of issuance of the report on challenged ballots or on objections, or on both, file with the Board in Washington, D.C., exceptions to such report, with supporting brief if desired. Within 7 days from the last date on which exceptions and any supporting brief may be filed, or such further period as the Board may allow, a party opposing the exceptions may file an answering brief with the Board in Washington, D.C. If no exceptions are filed to such report, the Board, upon the expiration of the period for filing such exceptions, may decide the matter forthwith upon the record or may make other disposition of the case. The Board shall thereupon proceed pursuant to § 102.67: *Provided, however,* That in any with an unfair labor practice case for purposes of hearing the provisions of § 102.46 of thes rules shall govern with respect to the filing of exceptions or an answering brief to the exceptions to the administrative law judge's decision.

(g)(1)(i) In a proceeding pursuant to this section in which a hearing is held, the record in the case shall consist of the notice of hearing, motions, rulings, orders, stenographic report of the hearing, stipulations, exhibits, together with the objections to the conduct of the election or to conduct affecting the results of the election, any report on such objections, any report on challenged ballots, exceptions to any such report, any briefs or other legal memoranda submitted by the parties, the decision of the regional director, if any, and the record previously made as defined in § 102.68. Materials other than those set out above shall not be a part of the record.

(ii) In a proceeding pursuant to this section in which no hearing is held, the record shall consist of the objections to the conduct of the election or to conduct affecting the results of the election, any report on objections or on challenged ballots and any exceptions to such a report, any regional director's decision on objections or challenged ballots and any request for review of such a decision, any documentary evidence, excluding statements of witnesses, relied upon by the regional director in his decision or report, any briefs or other legal memoranda submitted by the parties, and any other motions, rulings or orders of the regional director. Materials other than those set out above shall not be a part of the record, except as provided in paragraph (g)(3) of this section.

(2) Immediately upon issuance of a report on objections or challenges, or both, upon issuance by the regional director of an order transferring the case to the Board, or upon issuance of an order granting a request for review by the Board, the regional director shall transmit to the Board the record of the proceeding as defined in paragraph (g)(1) of this section.

(3) In a proceeding pursuant to this section in which no hearing is held, a party filing exceptions to a regional director's report on objections or challenges, a request for review of a regional director's decision on objections or challenges, or any opposition thereto, may support its submission to the Board by appending thereto copies of documentary evidence, including copies of any affidavits, it has timely submitted to the regional director and

which were not included in the report or decision. Documentary evidence so appended shall there upon become part of the record in the proceeding. Failure to timely submit such documentary evidence to the regional director, or to append that evidence to its submission to the Board in the representation proceeding as provided above, shall preclude a party from replying on such evidence in any subsequent related unfair labor proceeding.

(h) In any such case in which the regional director or the Board, upon a ruling on challenged ballots, has directed that such ballots be opened and counted and a revised tally of ballots issued, and no objection to such revised tally is filed by any party within 3 days after the revised tally of ballots has been furnished, the regional director shall forthwith issue to the parties certification of the results of the election, including certification of representative where appropriate, with the same force and effect as if issued by the Board. The proceeding shall thereupon be closed.

(i)(1) The action of the regional director in issuing a notice of hearing on objections or challenged ballots, or both, following proceedings under § 102.62(b) shall constitute a transfer of the case to the Board, and the provisions of § 102.65(c) shall apply with respect to special permission to appeal to the Board from any such direction of hearing.

(2) Exceptions, if any, to the hearing officer's report or to the administrative law judge's decision, and any answering brief to such exceptions, shall be filed with the Board in Washington, D.C., in accordance with paragraph (f) of this section.

(j)(1) All documents filed with the Board under the provisions of this section shall be filed in eight copies, double spaced, on 8½- by 11-inch paper, and shall be printed or otherwise legibly duplicated. Carbon copies of typewritten materials will not be accepted. Briefs in support of exceptions or answering briefs shall not exceed 50 pages in length, exclusive of subject index and table of cases and other authorities cited, unless permission to exceed that limit is obtained from the Board by motion, setting forth the reasons therefor, filed not less than 5 days, including Saturdays, Sundays, and holidays, prior to the date the brief is due. Where any brief filed pursuant to this section exceeds 20 pages, it shall contain a subject index with page references and an alphabetical table of cases and other authorities cited.

(2) The party filing with the Board exceptions to a report, a supporting brief, or an answering brief shall serve a copy thereof on the other parties and shall file a copy with the regional director. A statement of such service shall be filed with the Board together with the document.

(3) Requests for extensions of time to file exceptions to a report, supporting briefs, or answering briefs, as permitted by this section, shall be filed with the Board or the regional director, as the case may be, not less than 3 days before the date the brief or other document is due. The party filing the request for an extension of time shall serve a copy thereof on the other parties and, if filed with the Board, on the regional director. A statement of such service shall be filed with the document.

[38 FR 3961, Feb. 8, 1973, as amended at 46 FR 45923, Sept. 15, 1981; 47 FR 40772, Sept. 15, 1982; 47 FR 42569, Sept. 28, 1982; 51 FR 23747, July 1, 1986]

EFFECTIVE DATE NOTE: 29 CFR 102.69(a), (c)(2), (e), and (f) were revised at 51 FR 23747, July 1, 1986. This revision becomes effective on September 29, 1986. For the convenience of the user, the superseded text reads as follows:

§ 102.69 Election procedure; tally of ballots; objections; certification by regional director; report on challenged ballots; report on objections; exemptions; action of the Board; hearings.

(a) Unless otherwise directed by the Board, all elections shall be conducted under the supervision of the regional director in whose region the proceeding is pending. All elections shall be by secret ballot. Whenever two or more labor organizations are included as choices in an election, either participant may, upon its prompt request to and approval thereof by the regional director, whose decision shall be final, have its name removed from the ballot: *Provided, however,* That in a proceeding involving an employer-filed petition or a petition for decertification the labor organization certi-

fied, currently recognized, or found to be seeking recognition may not have its name removed from the ballot without giving timely notice in writing to all parties and the regional director, disclaiming any representation interest among the employees in the unit. Any party may be represented by observers of his own selection, subject to such limitations as the regional director may prescribe. Any party and Board agents may challenge, for good cause, the eligibility of any person to participate in the election. The ballots of such challenged persons shall be impounded. Upon the conclusion of the election, the regional director shall cause to be furnished to the parties a tally of ballots. Within 5 days after the tally of ballots has been furnished, any party may file with the regional director an original and five copies of objections to the conduct of the election or to conduct affecting the results of the election, which shall contain a short statement of the reasons therefor. Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the results of the election. The regional director will cause a copy of the objections to be served on each of the other parties to the proceeding. Within 5 days after the filing of objections, or such additional time as the regional director may allow, the party filing objections shall furnish to the regional director the evidence available to it to support the objections.

* * * * *

(c) * * *

(2) If a consent election has been held pursuant to § 102.62(b), the regional director shall prepare and cause to be served on the parties a report on challenged ballots or on objections, or on both, including his recommendations, which report, together with the tally of ballots, he shall forward to the Board in Washington, D.C. Within 10 days from the date of issuance of the report on challenged ballots or on objections, or on both, any party may file with the Board in Washington, D.C., exceptions to such report, with supporting documents as permitted by § 102.69(g)(3) and/or a supporting brief if desired. Within 7 days from the last date on which exceptions and any supporting documents and/or supporting brief may be filed, or such further period as the Board may allow, a party opposing the exceptions may file an answering brief, with supporting documents as permitted by § 102.69(g)(3) if desired, with the Board in Washington, D.C.; except that, if personal service of the exceptions and any supporting documents and/or brief is made upon the Board, 10 days will be allowed. However, 3 days as provided in § 102.114 will not be added to the prescribed time for filing an answering brief. If no exceptions are filed to such report, the Board, upon the expiration of the period for filing such exceptions, may decide the matter forthwith upon the record or may make other disposition of the case. The report on challenged ballots may be consolidated with the report on objections in appropriate cases.

* * * * *

(e) Any hearing pursuant to this section shall be conducted in accordance with the provisions of §§ 102.64, 102.65, and 102.66, insofar as applicable, except that upon the close of such hearing, the hearing officer shall, if directed by the regional director, prepare and cause to be served on the parties a report resolving questions of credibility and containing findings of fact and recommendations as to the disposition of the issues. In any case in which the regional director has directed that a report be prepared and served, any party may, within 10 days from the date of issuance of such report, file with the regional director the original and one copy, which may be a carbon copy, of exceptions to such report, with supporting brief, if desired. A copy of such exceptions, together with a copy of any brief filed, shall immediately be served on the other parties and a statement of service filed with the regional director. Within 7 days from the last date on which exceptions and any supporting brief may be filed, or such further time as the regional director may allow, a party opposing the exceptions may file an answering brief with the regional director; except that if personal service of the exceptions and any supporting brief is made upon the regional director, 10 days will be allowed. However, 3 days as provided in § 102.114 will not be added to the prescribed time for filing an answering brief. An original and one copy, which may be a carbon copy, shall be submitted. A copy of such answering brief shall immediately be served on the other parties and a statement of service filed with the regional director. If no exceptions are filed to such report, the regional director, upon the expiration of the period for filing such exceptions, may decide the matter forthwith upon the record or may make other disposition of the case.

(f) In a case involving a consent election held pursuant to § 102.62(b), if exceptions are filed, either to the report on challenged ballots or on objections, or on both if it be a consolidated report, and it appears to the Board that such exceptions do not raise substantial and material issues with respect to the conduct or results of the election, the Board may decide the matter forthwith upon the record or may make other disposition of the case. If it appears to the Board that such exceptions raise substantial and

material factual issues, the Board may direct the regional director or other agent or the Board to issue and cause to be served on the parties a notice of hearing on said exceptions before a hearing officer. The hearing shall be conducted in accordance with the provisions of §§ 102.64, 102.65, and 102.66 insofar as applicable. Upon the close of the hearing the agent conducting the hearing, if directed by the Board, shall prepare and cause to be served on the parties a report resolving questions of credibility and containing findings of fact and recommendations to the Board as to the disposition of the challenges or objections or both if it be a consolidated report. In any case in which the Board has directed that a report be prepared and served, any party may within 10 days from the date of issuance of the report on challenged ballots or on objections, or on both, file with the Board in Washington, D.C., exceptions to such report, with supporting brief if desired. Within 7 days from the last date on which exceptions and any supporting brief may be filed, or such further period as the Board may allow, a party opposing the exceptions may file an answering brief with the Board in Washington, D.C.; except that, if personal service of the exceptions and any supporting brief is made upon the Board, 10 days will be allowed. However, 3 days as provided in § 102.114 will not be added to the prescribed time for filing an answering brief. If no exceptions are filed to such report, the Board, upon the expiration of the period for filing such exceptions, may decide the matter forthwith upon the record or may make other disposition of the case. The Board shall thereupon proceed pursuant to § 102.67; *Provided, however,* That in any proceeding wherein a representation case has been consolidated with an unfair labor practice case for purposes of hearing the provisions of § 102.46 of these rules shall govern with respect to the filing of exceptions or an answering brief to the exceptions to the administrative law judge's decision.

* * * * *

§ 102.70 Runoff election.

(a) The regional director shall conduct a runoff election, without further order of the Board, when an election in which the ballot provided for not less than three choices (i.e., at least two representatives and "neither") results in no choice receiving a majority of the valid ballots cast and no objections are filed as provided in § 102.69. Only one runoff shall be held pursuant to this section.

(b) Employees who were eligible to vote in the election and who are in an eligible category on the date of the runoff election shall be eligible to vote in the runoff election.

(c) The ballot in the runoff election shall provide for a selection between the two choices receiving the largest and second largest number of votes.

(d) In the event the number of votes cast in an inconclusive election in which the ballot provided for a choice among two or more representatives and "neither" or "none" is equally divided among the several choices; or in the event the number of ballots cast for one choice in such election is equal to the number cast for another of the choices but less than the number cast for the third choice, the regional director shall declare the first election a nullity and shall conduct another election, providing for a selection from among the three choices afforded in the original ballot; and he shall thereafter proceed in accordance with paragraphs (a), (b), and (c) of this section. In the event two or more choices receive the same number of ballots and another choice receives no ballots and there are no challenged ballots that would affect the results of the election, and if all eligible voters have cast valid ballots, there shall be no runoff election and a certification of results of election shall be issued. Only one such further election pursuant to this paragraph may be held.

(e) Upon the conclusion of the runoff election, the provisions of § 102.69 shall govern, insofar as applicable.

[26 FR 3891, May 4, 1961]

§ 102.71 Dismissal of petition; refusal to proceed with petition; requests for review by the Board of action of the regional director.

(a) If, after a petition has been filed and at any time prior to the close of hearing, it shall appear to the regional director that no further proceedings are warranted, the regional director may dismiss the petition by administrative action and shall so advise the petitioner in writing, setting forth a simple statement of the procedural or other grounds for the dismissal, with

copies to the other parties to the proceeding. Any party may obtain a review of such action by filing a request therefor with the Board in Washington, D.C., in accordance with the provisions of paragraph (c) of this section. A request for review from an action of a regional director pursuant to this subsection may be granted only upon one or more of the following grounds:

(1) That a substantial question of law or policy is raised because of (i) the absence of, or (ii) a departure from, officially reported Board precedent.

(2) There are compelling reasons for reconsideration of an important Board rule or policy.

(3) The request for review is accompanied by documentary evidence previously submitted to the regional director raising serious doubts as to the regional director's factual findings, thus indicating that there are factual issues which can best be resolved upon the basis of a record developed at a hearing.

(4) The regional director's action is, on its face, arbitrary or capricious.

(5) The petition raises issues which can best be resolved upon the basis of a record developed at a hearing.

(b) Where the regional director dismisses a petition or directs that the proceeding on the petition be held in abeyance, and such action is taken because of the pendency of concurrent unresolved charges of unfair labor practices, and the regional director, upon request, has so notified the parties in writing, any party may obtain a review of the regional director's action by filing a request therefor with the Board in Washington, D.C., in accordance with the provisions of paragraph (c) of this section. A review of an action of a regional director pursuant to this subsection may be granted only upon one or more of the following grounds:

(1) That a substantial question of law or policy is raised because of (i) the absence of, or (ii) a departure from, officially reported Board precedent.

(2) There are compelling reasons for reconsideration of an important Board rule or policy.

(3) The regional director's action is, on its face, arbitrary or capricious.

(c) A request for review must be filed with the Board in Washington, D.C., and a copy filed with the regional director and copies served on all the other parties within 14 days of service of the notice of dismissal or notification that the petition is to be held in abeyance. The request shall be submitted in eight copies and shall contain a complete statement setting forth facts and reasons upon which the request is based. Such request shall be printed or otherwise legibly duplicated: *Provided, however,* That carbon copies of typewritten materials will not be accepted. Requests for an extension of time within which to file the request for review shall be filed with the Board in Washington, D.C., and a statement of service shall accompany such request.

[39 FR 4080, Feb. 1, 1974, as amended at 40 FR 6204, Feb. 10, 1975; 51 FR 23748, July 1, 1986]

EFFECTIVE DATE NOTE: 29 CFR 102.71(c) was revised at 51 FR 23748, July 1, 1986. This revision becomes effective on September 29, 1986. For the convenience of the user, the superseded text reads as follows:

§ 102.71 Dismissal of petition; refusal to proceed with petition; requests for review by Board of action of the regional director.

* * * * *

(c) A request for review must be filed with the Board in Washington, D.C., and a copy filed with the regional director and copies served upon all the other parties within 10 days of service of the notice of dismissal or notification that the petition is to be held in abeyance. The request shall be submitted in eight copies and shall contain a complete statement setting forth facts and reasons upon which the request is based. Such request shall be printed or otherwise legibly duplicated: *Provided, however,* That carbon copies of typewritten matter shall not be filed and if submitted will not be accepted. Requests for an extension of time within which to file the request for review shall be filed with the Board in Washington, D.C., and a statement of service shall accompany such request.

§ 102.72 Filing petition with general counsel; investigation upon motion of general counsel; transfer of petition and proceeding from region to general counsel or to another region; consolidation of proceedings in same region; severance; procedure before general counsel in cases over which he has assumed jurisdiction.

(a) Whenever it appears necessary in order to effectuate the purposes of the Act, or to avoid unnecessary costs of delay, the general counsel may permit a petition to be filed with him in Washington, D.C., or may, at any time after a petition has been filed with a regional director pursuant to § 102.60, order that such petition and any proceeding that may have been instituted with respect thereto:

(1) Be transferred to and continued before him, for the purpose of investigation or consolidation with any other proceeding which may have been instituted in a regional office or with him; or

(2) Be consolidated with any other proceeding which may have been instituted in the same region; or

(3) Be transferred to and continued in any other region, for the purpose of investigation or consolidation with any proceeding which may have been instituted in or transferred to such region; or

(4) Be severed from any other proceeding with which it may have been consolidated pursuant to this section.

(b) The provisions of §§ 102.60 to 102.71, inclusive, shall, insofar as applicable, apply to proceedings before the general counsel pursuant to this section, and the powers granted to regional directors in such provisions shall, for the purpose of this section, be reserved to and exercised by the general counsel. After the transfer of any petition and any proceeding which may have been instituted in respect thereto from one region to another pursuant to this section, the provisions of this subpart shall, insofar as applicable, govern such petition and such proceedings as if the petition has originally been filed in the region to which the transfer was made.

(c) The regional director may exercise the powers in paragraph (a)(2) and (4) of this section with respect to proceedings pending in his region.

[32 FR 9550, July 1, 1967]

Subpart D—Procedure for Unfair Labor Practice and Representation Cases Under Sections 8(b)(7) and 9(c) of the Act

§ 102.73 Initiation of proceedings.

Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of section 8(b)(7) of the Act, the regional director shall investigate such charges, giving it the priority specified in Subpart G of this part.

§ 102.74 Complaint and formal proceedings.

If it appears to the regional director that the charge has merit, formal proceedings in respect thereto shall be instituted in accordance with the procedures described in §§ 102.15 to 102.51, inclusive, insofar as they are applicable, and insofar as they are not inconsistent with the provisions of this subpart. If it appears to the regional director that issuance of a complaint is not warranted, he shall decline to issue a complaint, and the provisions of § 102.19, including the provisions for appeal to the general counsel, shall be applicable unless an election has been directed under §§ 102.77 and 102.78, in which event the provisions of § 102.81 shall be applicable.

§ 102.75 Suspension of proceedings on the charge where timely petition is filed.

If it appears to the regional director that issuance of a complaint may be warranted but for the pendency of a petition under section 9(c) of the Act, which has been filed by any proper party within a reasonable time not to exceed 30 days from the commencement of picketing, the regional director shall suspend proceedings on the charge and shall proceed to investigate the petition under the expedited procedure provided below, pursuant to the first proviso to subparagraph (C) of section 8(b)(7) of the Act.

§ 102.76 Petition; who may file; where to file; contents.

When picketing of an employer has been conducted for an object proscribed by section 8(b)(7) of the Act, a petition for the determination of a question concerning representation of the employees of such employer may be filed in accordance with the provisions of §§ 102.60 and 102.61, insofar as applicable: *Provided, however,* That if a charge under § 102.73 has been filed against the labor organization on whose behalf picketing has been conducted, the petition shall not be required to contain a statement that the employer declines to recognize the petitioner as the representative within the meaning of section 9(a) of the Act; or that the labor organization is currently recognized but desires certification under the act; or that the individuals or labor organizations who have been certified or are currently recognized by the employer are no longer the representative; or, if the petitioner is an employer, that one or more individuals or labor organizations have presented to the petitioner a claim to be recognized as the exclusive representative of the employees in the unit claimed to be appropriate.

§ 102.77 Investigation of petition by regional director; directed election.

(a) Where a petition has been filed pursuant to § 102.76 the regional director shall make an investigation of the matters and allegations set forth therein. Any party, and any individual or labor organization purporting to act as representative of the employees involved and any labor organization on whose behalf picketing has been conducted as described in section 8(b)(7)(C) of the Act may present documentary and other evidence relating to the matters and allegations set forth in the petition.

(b) If after the investigation of such petition or any petition filed under subpart C of these rules, and after the investigation of the charge filed pursuant to § 102.73, it appears to the regional director that an expedited election under section 8(b)(7)(C) is warranted, and that the policies of the act would be effectuated thereby, he shall forthwith proceed to conduct an election by secret ballot of the employees in an appropriate unit, or make other disposition of the matter: *Provided, however,* That in any case in which it appears to the regional director that the proceeding raises questions which cannot be decided without a hearing, he may issue and cause to be served on the parties, individuals, and labor organizations involved a notice of hearing before a hearing officer at a time and place fixed therein. In this event, the method of conducting the hearing and the procedure following, including transfer of the case to the Board, shall be governed insofar as applicable by §§ 102.63 to 102.68, inclusive, except that the parties shall not file briefs without special permission of the regional director or the Board, as the case may be, but shall, however, state their respective legal positions upon the record at the close of the hearing, and except that any request for review of a decision of the regional director shall be filed promptly after the issuance of such decision.

[24 FR 9102, Nov. 7, 1959, as amended at 26 FR 3892, May 4, 1961]

§ 102.78 Election procedure; method of conducting balloting; postballoting procedure.

If no agreement such as that provided in § 102.79 has been made, the regional director shall fix the time and place of the election, eligibility requirements for voting, and other arrangements for the balloting. The method of conducting the balloting and the postballoting procedure shall be governed, insofar as applicable, by the provisions of §§ 102.69 and 102.70 except that the labor organization on whose behalf picketing has been conducted may not have its name removed from the ballot without the consent of the regional director and except that the regional director's rulings on any objections or challenged ballots shall be final unless the Board grants special permission to appeal from the regional director's rulings. Any request for such permission shall be filed promptly, in writing, and shall briefly state the grounds relied upon. The party requesting review shall immediately serve a copy thereof on

each other party. A request for review shall not operate as a stay of the regional director's rulings unless so ordered by the Board.

§ 102.79 Consent-election agreements.

Where a petition has been duly filed, the parties involved may, subject to the approval of the regional director, enter into an agreement governing the method of conducting the election as provided for in § 102.62(a), insofar as applicable.

§ 102.80 Dismissal of petition; refusal to process petition under expedited procedure.

(a) If, after a petition has been filed pursuant to the provisions of § 102.76, and prior to the close of the hearing, it shall appear to the regional director that further proceedings in respect thereto in accordance with the provisions of § 102.77 are not warranted, he may dismiss the petition by administrative action, and the action of the regional director shall be final, subject to a prompt appeal to the Board on special permission which may be granted by the Board. Upon such appeal the provisions of § 102.71 shall govern insofar as applicable. Such appeal shall not operate as a stay unless specifically ordered by the Board.

(b) If it shall appear to the regional director that an expedited election is not warranted but that proceedings under Subpart C of this part are warranted, he shall so notify the parties in writing with a simple statement of the grounds for his decision.

(c) Where the regional director, pursuant to §§ 102.77 and 102.78, has determined that a hearing prior to election is not required to resolve the issues raised by the petition and has directed an expedited election, any party aggrieved may file a request with the Board for special permission to appeal from such determination. Such request shall be filed promptly, in writing, and shall briefly state the grounds relied upon. The party requesting such appeal shall immediately serve a copy thereof on each other party. Should the Board grant the requested permission to appeal, such action shall not, unless specifically ordered by the Board, operate as a stay of any action by the regional director.

[24 FR 9102, Nov. 7, 1959, as amended at 26 FR 3892, May 4, 1961]

§ 102.81 Review by the general counsel of refusal to proceed on charge; resumption of proceedings upon charge held during pendency of petition; review by the general counsel of refusal to proceed on related charge.

(a) Where an election has been directed by the regional director or the Board in accordance with the provisions of §§ 102.77 and 102.78, the regional director shall decline to issue a complaint on the charge, and he shall so advise the parties in writing, accompanied by a simple statement of the procedural or other grounds for his action. The person making the charge may obtain a review of such action by filing an appeal with the general counsel in Washington, D.C., and filing a copy of the appeal with the regional director, within 7 days from the service of the notice of such refusal by the regional director. In all other respects the appeal shall be subject to the provisions of § 102.19. Such appeal shall not operate as a stay of any action by the regional director.

(b) Where an election has not been directed and the petition has been dismissed in accordance with the provisions of § 102.80, the regional director shall resume investigation of the charge and shall proceed in accordance with § 102.74.

(c) If in connection with an 8(b)(7) proceeding, unfair labor practice charges under other sections of the act have been filed and the regional director upon investigation has declined to issue a complaint upon such charges, he shall so advise the parties in writing, accompanied by a simple statement of the procedural or other grounds for his action. The person making such charges may obtain a review of such action by filing an appeal with the general counsel in Washington, D.C., and filing a copy of the appeal with the regional director, within 7 days from the service of the notice of such refusal by the regional director. In all other respects the

appeal shall be subject to the provisions of § 102.19.

[32 FR 9550, July 1, 1967, as amended at 51 FR 23749, July 1, 1986]

EFFECTIVE DATE NOTE: 29 CFR 102.81(a) and (c) were revised at 51 FR 23749, July 1, 1986. This revision becomes effective on September 29, 1986. For the convenience of the user, the superseded text reads as follows:

§ 102.81 Review by the general counsel of refusal to proceed on charge; resumption of proceedings upon charge held during pendency of petition; review by general counsel of refusal to proceed on related charge.

(a) Where an election has been directed by the regional director or the Board in accordance with the provisions of §§ 102.77 and 102.78, the regional director shall decline to issue a complaint on the charge, and he shall so advise the parties in writing, accompanied by a simple statement of the procedural or other grounds for his action. The person making the charge may obtain a review of such action by filing an appeal with the general counsel in Washington, D.C., and filing a copy of the appeal with the regional director, within 3 days from the service of the notice of such refusal by the regional director. In all other respects the appeal shall be subject to the provisions of § 102.19. Such appeal shall not operate as a stay of any action by the regional director.

* * * * *

(c) If in connection with a section 8(b)(7) proceeding, unfair labor practice charges under other sections of the act have been filed and the regional director upon investigation has declined to issue a complaint upon such charges, he shall so advise the parties in writing, accompanied by a simple statement of the procedural or other grounds for his action. The person making such charges may obtain a review of such action by filing an appeal with the general counsel in Washington, D.C., and filing a copy of the appeal with the regional director, within 3 days from the service of the notice of such refusal by the regional director. In all other respects the appeal shall be subject to the provisions of § 102.19.

§ 102.82 Transfer, consolidation, and severance.

The provisions of §§ 102.33 and 102.72, respecting the filing of a charge or petition with the general counsel and the transfer, consolidation, and severance of proceedings, shall apply to proceedings under this subpart, except that the provisions of §§ 102.73 to 102.81, inclusive, shall govern proceedings before the general counsel.

Subpart E—Procedure for Referendum Under Section 9(e) of the Act

§ 102.83 Petition for referendum under section 9(e)(1) of the Act; who may file; where to file; withdrawal.

A petition to rescind the authority of a labor organization to make an agreement requiring as a condition of employment membership in such labor organization may be filed by an employee or group of employees on behalf of 30 percent or more of the employees in a bargaining unit covered by such an agreement. The petition shall be in writing and signed, and either shall be sworn to before a notary public, Board agent, or other person duly authorized by law to administer oaths and take acknowledgments or shall contain a declaration by the person signing it, under the penalties of the Criminal Code, that its contents are true and correct to the best of his knowledge and belief.[1] Four copies of the petition shall be filed with the regional director wherein the bargaining unit exists or, if the unit exists in two or more regions, with the regional director for any of such regions. The petition may be withdrawn only with the approval of the regional director with whom such petition was filed, except that if the proceeding has been transferred to the Board, pursuant to § 102.67, the petition may be withdrawn only with the consent of the Board. Upon approval of the withdrawal of any petition the case shall be closed.

§ 102.84 Contents of petition to rescind authority.

(a) The name of the employer.

(b) The address of the establishments involved.

(c) The general nature of the employer's business.

[1] Forms for filing such petitions will be supplied by the regional office upon request.

(d) A description of the bargaining unit involved.

(e) The name and address of the labor organization whose authority it is desired to rescind.

(f) The number of employees in the unit.

(g) Whether there is a strike or picketing in progress at the establishment involved and, if so, the approximate number of employees participating, and the date such strike or picketing commenced.

(h) The date of execution and of expiration of any contract in effect covering the unit involved.

(i) The name and address of the person designated to accept service of documents for petitioners.

(j) Any other relevant facts.

§ 102.85 Investigation of petition by regional director; consent referendum; directed referendum.

Where a petition has been filed pursuant to § 102.83 and it appears to the regional director that the petitioner has made an appropriate showing, in such form as the regional director may determine, that 30 percent or more of the employees within a unit covered by an agreement between their employer and a labor organization requiring membership in such labor organization desire to rescind the authority of such labor organization to make such an agreement, he shall proceed to conduct a secret ballot of the employees involved on the question whether they desire to rescind the authority of the labor organization to make such an agreement with their employer: *Provided, however,* That in any case in which it appears to the regional director that the proceeding raises questions which cannot be decided without a hearing, he may issue and cause to be served on the parties a notice of hearing before a hearing officer at a time and place fixed therein. The regional director shall fix the time and place of the election, eligibility requirements for voting, and other arrangements of the balloting, but the parties may enter into an agreement, subject to the approval of the regional director, fixing such arrangements. In any such consent agreements, provision may be made for final determination of all questions arising with respect to the balloting by the regional director or by the Board.

[26 FR 3892, May 4, 1961]

§ 102.86 Hearing; posthearing procedure.

The method of conducting the hearing and the procedure following the hearing, including transfer of the case to the Board, shall be governed, insofar as applicable, by §§ 102.63 to 102.68, inclusive.

§ 102.87 Method of conducting balloting; postballoting procedure.

The method of conducting the balloting and the postballoting procedure shall be governed by the provisions of § 102.69, insofar as applicable.

§ 102.88 Refusal to conduct referendum; appeal to Board.

If, after a petition has been filed, and prior to the close of the hearing, it shall appear to the regional director that no referendum should be conducted, he shall dismiss the petition by administrative action. Such dismissal shall be in writing and accompanied by a simple statement of the procedural or other grounds. The petitioner may obtain a review of such action by filing a request therefor with the Board in Washington, D.C., and filing a copy of such request with the regional director and each of the other parties within 10 days from the service of notice of such dismissal. The request shall contain a complete statement setting forth the facts and reasons upon which the request is based.

[26 FR 3892, May 4, 1961]

Subpart F—Procedure To Hear and Determine Disputes Under Section 10(k) of the Act

§ 102.89 Initiation of proceedings.

Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(D) of section 8(b) of the Act, the regional director of the office in which such charge is filed or to which it is referred shall, as soon as possible after the charge has been filed, serve upon the parties a copy of the charge

together with a notice of the filing of the charge and shall investigate such charge and if it is deemed appropriate to seek injunctive relief of a district court pursuant to section 10(1) of the Act, he shall give it priority over all other cases in the office except other cases under section 10(1) and cases of like character.

[26 FR 7546, Aug. 15, 1961]

§ 102.90 Notice of filing of charge; notice of hearing; hearing; proceedings before the Board; briefs; determination of dispute.

If it appears to the regional director that the charge has merit and the parties to the dispute have not submitted satisfactory evidence to the regional director that they have adjusted, or have agreed upon methods for the voluntary adjustment of, the dispute out of which such unfair labor practice shall have arisen, he shall cause to be served on all parties to such dispute a notice of hearing under section 10(k) of the Act before a hearing officer at a time and place fixed therein which shall be not less than 10 days after service of the notice of the filing of said charge. The notice of hearing shall contain a simple statement of the issues involved in such dispute. Such notice shall be issued promptly, and, in cases in which it is deemed appropriate to seek injunctive relief pursuant to section 10(1) of the Act, shall normally be issued within 5 days of the date upon which injunctive relief is first sought. Hearings shall be conducted by a hearing officer, and the procedure shall conform, insofar as applicable, to the procedure set forth in §§ 102.64 to 102.68, inclusive. Upon the close of the hearing, the proceeding shall be transferred to the Board and the Board shall proceed either forthwith upon the record, or after oral argument, or the submission of briefs, or further hearing, to determine the dispute or make other disposition of the matter. Should any party desire to file a brief with the Board, eight copies thereof shall be filed with the Board at Washington, D.C., within 7 days after the close of the hearing: *Provided, however,* That, in cases involving the national defense and so designated in the notice of hearing, no briefs shall be filed, and the parties, after the close of the evidence, may argue orally upon the record their respective contentions and positions: *Provided further,* That, in cases involving the national defense, upon application for leave to file briefs expeditiously made to the Board in Washington, D.C., after the close of the hearing, the Board may for good cause shown grant such leave and thereupon specify the time for filing. Immediately upon such filing, a copy shall be served on the other parties. Such brief shall be printed or otherwise legibly duplicated: *Provided, however,* That carbon copies of typewritten matter shall not be filed and if submitted will not be accepted. Requests for extension of time in which to file a brief under authority of this section shall be in writing and received by the Board in Washington, D.C., 3 days prior to the due date with copies thereof served on the other parties. No reply brief may be filed except upon special leave of the Board.

[29 FR 15921, Nov. 28, 1964]

§ 102.91 Compliance with determination; further proceedings.

If, after issuance of the determination by the Board, the parties submit to the regional director satisfactory evidence that they have complied with the determination, the regional director shall dismiss the charge. If no satisfactory evidence of compliance is submitted, the regional director shall proceed with the charge under paragraph (4)(D) of section 8(b) and section 10 of the Act and the procedure prescribed in §§ 102.9 to 102.51, inclusive, shall, insofar as applicable, govern: *Provided, however,* That if the Board determination is that employees represented by a charged union are entitled to perform the work in dispute, the regional director shall dismiss the charge as to that union irrespective of whether the employer has complied with that determination.

[36 FR 9133, May 20, 1971]

§ 102.92 Review of determination.

The record of the proceeding under section 10(k) and the determination of

the Board thereon shall become a part of the record in such unfair labor practice proceeding and shall be subject to judicial review, insofar as it is in issue, in proceedings to enforce or review the final order of the Board under section 10 (e) and (f) of the Act.

§ 102.93 Alternative procedure.

If, either before or after service of the notice of hearing, the parties submit to the regional director satisfactory evidence that they have adjusted the dispute, the regional director shall dismiss the charge and shall withdraw the notice of hearing if notice has issued. If, either before or after issuance of notice of hearing, the parties submit to the regional director satisfactory evidence that they have agreed upon methods for the voluntary adjustment of the dispute, the regional director shall defer action upon the charge and shall withdraw the notice of hearing if notice has issued. If it appears to the regional director that the dispute has not been adjusted in accordance with such agreed-upon methods and that an unfair labor practice within the meaning of section 8(b)(4)(D) of the Act is occurring or has occurred, he may issue a complaint under § 102.15, and the procedure prescribed in §§ 102.9 to 102.51, inclusive, shall, insofar as applicable, govern; and §§ 102.90 to 102.92, inclusive, are inapplicable: *Provided, however,* That if an agreed-upon method for voluntary adjustment results in a determination that employees represented by a charged union are entitled to perform the work in dispute, the regional director shall dismiss the charge as to that union irrespective of whether the employer has complied with that determination.

[36 FR 9133, May 20, 1971]

Subpart G—Procedure in Cases Under Section 10(j), (l), and (m) of the Act

§ 102.94 Expeditious processing of section 10(j) cases.

(a) Whenever temporary relief or a restraining order pursuant to section 10(j) of the Act has been procured by the Board, the complaint which has been the basis for such temporary relief or restraining order shall be heard expeditiously and the case shall be given priority by the Board in its successive steps following the issuance of the complaint (until ultimate enforcement or dismissal by the appropriate circuit court of appeals) over all other cases except cases of like character and cases under section 10 (l) and (m) of the Act.

(b) In the event the trial examiner hearing a complaint, concerning which the Board has procured temporary relief or a restraining order pursuant to section 10(j), recommends a dismissal in whole or in part of such complaint, the chief law officer shall forthwith suggest to the district court which issued such temporary relief or restraining order the possible change in circumstances arising out of the findings and recommendations of the trial examiner.

§ 102.95 Priority of cases pursuant to section 10(l) and (m) of the Act.

(a) Whenever a charge is filed alleging the commission of an unfair labor practice within the meaning of paragraph (4) (A), (B), (C), or (7) of section 8(b) of the Act, or section 8(e) of the Act, the regional office in which such charge is filed or to which it is referred shall give it priority over all other cases in the office except cases of like character and cases under paragraph (4)(D) of section 8(b) of the Act in which it is deemed appropriate to seek injunctive relief of a district court pursuant to section 10(l) of the Act.

(b) Whenever a charge is filed alleging the commission of an unfair labor practice within the meaning of subsection (a)(3) or (b)(2) of section 8 of the Act, the regional office in which such charge is filed or to which it is referred shall give it priority over all other cases in the office except cases of like character and cases under section 10(l) of the Act.

§ 102.96 Issuance of complaint promptly.

Whenever the regional attorney or other Board officer to whom the matter may be referred seeks injunctive relief of a district court pursuant to section 10(l) of the Act, a complaint

against the party or parties sought to be enjoined, covering the same subject matter as such application for injunctive relief, shall be issued promptly, normally within 5 days of the date upon which such injunctive relief is first sought, except in those cases under section 10(l) of the Act in which the procedure set forth in §§ 102.90 to 102.92, inclusive, is deemed applicable.

§ 102.97 Expeditious processing of section 10(l) and (m) cases in successive stages.

(a) Any complaint issued pursuant to § 102.95(a) or, in a case in which it is deemed appropriate to seek injunctive relief of a district court pursuant to section 10(l) of the Act, any complaint issued pursuant to § 102.93 or notice of hearing issued pursuant to § 102.90 shall be heard expeditiously and the case shall be given priority in such successive steps following its issuance (until ultimate enforcement or dismissal by the appropriate circuit court of appeals) over all cases except cases of like character.

(b) Any complaint issued pursuant to § 102.95(b) shall be heard expeditiously and the case shall be given priority in its successive steps following its issuance (until ultimate enforcement or dismissal by the appropriate circuit court of appeals) over all cases except cases of like character and cases under section 10(l) of the Act.

Subpart H—Declaratory Orders and Advisory Opinions Regarding Board Jurisdiction

§ 102.98 Petition for advisory opinion; who may file; where to file.

(a) Whenever a party to a proceeding before any agency or court of any State or Territory is in doubt whether the Board would assert jurisdiction on the basis of its current jurisdictional standards, he may file a petition with the Board for an advisory opinion on whether it would assert jurisdiction on the basis of its current standards.

(b) Whenever an agency or court of any State or territory is in doubt whether the Board would assert jurisdiction over the parties in a proceeding pending before such agency or court, the agency or court may file a petition with the Board for an advisory opinion on whether the Board would decline to assert jurisdiction over the parties before the agency or the court (1) on the basis of its current standards, or (2) because the employing enterprise is not within the jurisdiction of the National Labor Relations Act.

[24 FR 9102, Nov. 7, 1959, as amended at 51 FR 15613, Apr. 25, 1986]

§ 102.99 Contents of petition for advisory opinion; contents of request for administrative advice.

(a) A petition for an advisory opinion, when filed by a party to a proceeding before an agency or court of a State or Territory, shall allege the following:

(1) The name of the petitioner.

(2) The names of all other parties to the proceeding.

(3) The name of the agency or court.

(4) The docket number and nature of the proceeding.

(5) The general nature of the business involved in the proceeding.

(6) The commerce data relating to the operations of such business.

(7) Whether the commerce data described in this section are admitted or denied by other parties to the proceeding.

(8) The findings, if any, of the agency or court respecting the commerce data described in this section.

(9) Whether a representation or unfair labor practice proceeding involving the same labor dispute is pending before the Board and, if so, the case number thereof.

Petitions under this subsection shall be in writing and signed, and either shall be sworn to before a notary public, Board agent, or other person duly authorized by law to administer oaths and take acknowledgments or shall contain a declaration by the person signing it, under the penalties of the Criminal Code, that its contents are true and correct to the best of his knowledge and belief.

(b) A petition for an advisory opinion, when filed by an agency or court of a State or territory, shall allege the following:

(1) The name of the agency or court.

(2) The names of the parties to the proceeding and the docket number.

(3) The nature of the proceeding, and the need for the Board's opinion on the jurisdictional issue to the proceeding.

(4) The general nature of the business involved in the proceeding and, where appropriate, the nature of and details concerning the employing enterprise.

(5) The findings of the agency or court or, in the absence of findings, a statement of the evidence relating to the commerce operations of such business and, where appropriate, to the nature of the employing enterprise.

(c) Eight copies of such petition or request shall be submitted to the Board in Washington, DC. Such petition or request shall be printed or otherwise legibly duplicated. Carbon copies of typewritten matter will not be accepted.

[24 FR 9102, Nov. 7, 1959, as amended at 51 FR 15613, Apr. 25, 1986]

§ 102.100 Notice of petition; service of petition.

Upon the filing of a petition the petitioner shall immediately serve in the manner provided by § 102.114(a) of these rules a copy of the petition on all parties to the proceeding and on the director of the Board's regional office having jurisdiction over the territorial area in which such agency or court is located. A statement of service shall be filed with the petition as provided by § 102.114(b) of the rules.

[51 FR 23749, July 1, 1986]

§102.101 Response to petition; service of response.

Any party served with such petition may, within 14 days after service thereof, respond to the petition, admitting or denying its allegations. Eight copies of such response shall be filed with the Board in Washington, D.C. Such response shall be printed or otherwise legibly duplicated: *Provided however,* That carbon copies of typewritten materials will not be accepted. Such response shall immediately be served on all other parties to the proceeding, and a statement of service shall be filed in accordance with the provisions of § 102.114(b) of these rules.

[51 FR 23749, July 1, 1986]

EFFECTIVE DATE NOTE: 29 CFR 102.100 and 102.101 were revised at 51 FR 23749, July 1, 1986. This revision becomes effective on September 29, 1986. For the convenience of the user, the superseded text reads as follows:

§ 102.100 Notice of petition; service of petition.

Upon the filing of a petition, the petitioner shall immediately serve in the manner provided by § 102.112 a copy of the petition upon all parties to the proceeding and upon the director of the Board's regional office having jurisdiction over the territorial area in which such agency or court is located. A statement of service shall be filed with the petition as provided by § 102.113(b).

§ 102.101 Response to petition; service of response.

Any party served with such petition may, within 5 days after service thereof, respond to the petition, admitting or denying its allegations. Eight copies of such response shall be filed with the Board in Washington, D.C., Such response shall be printed or otherwise legibly duplicated: *Provided, however,* That carbon copies of typewritten matter shall not be filed and if submitted will not be accepted. Such response shall immediately be served on all other parties to the proceeding, and a statement of service shall be filed in accordance with the provisions of § 102.113(b).

[29 FR 15922, Nov. 28, 1964]

§ 102.102 Intervention.

Any person desiring to intervene shall make a motion for intervention, stating the grounds upon which such person claims to have an interest in the petition. Eight copies of such motion shall be filed with the Board in Washington, D.C. Such motion shall be printed or otherwise legibly duplicated: *Provided, however,* That carbon copies of typewritten matter shall not be filed and if submitted will not be accepted.

[29 FR 15922, Nov. 28, 1964]

§ 102.103 Proceedings before the Board; briefs; advisory opinions.

The Board shall thereupon proceed, upon the petition, responses, and submission of briefs, to determine whether, on the facts before it, the com-

merce operations of the employer involved are such that it would or would not assert jurisdiction. Such determination shall be in the form of an advisory opinion and shall be served upon the parties. No briefs shall be filed except upon special permission of the Board.

§ 102.104 Withdrawal of petition.

The petitioner may withdraw his petition at any time prior to issuance of the Board's advisory opinion.

§ 102.105 Petitions for declaratory orders; who may file; where to file; withdrawal.

Whenever both an unfair labor practice charge and a representation case relating to the same employer are contemporaneously on file in a regional office of the Board, and the general counsel entertains doubt whether the Board would assert jurisdiction over the employer involved, he may file a petition with the Board for a declaratory order disposing of the jurisdictional issue in the cases. Such petition may be withdrawn at any time prior to the issuance of the Board's order.

§ 102.106 Contents of petition for declaratory order.

A petition for a declaratory order shall allege the following:

(a) The name of the employer.

(b) The general nature of the employer's business.

(c) The case numbers of the unfair labor practice and representation cases.

(d) The commerce data relating to the operations of such business.

(e) Whether any proceeding involving the same subject matter is pending before an agency or court of a State or territory. Eight copies of the petition shall be filed with the Board in Washington, D.C. Such petition shall be printed or otherwise legibly duplicated: *Provided, however,* That carbon copies of typewritten matter shall not be filed and if submitted will not be accepted.

(f) Seven copies of the petition shall be filed with the Board in Washington, D.C. Such petition shall be printed or otherwise legibly duplicated: *Provided, however,* That carbon copies of typewritten matter shall not be filed and if submitted will not be accepted.

[24 FR 9102, Nov. 7, 1959, as amended at 27 FR 5095, May 30, 1962; 29 FR 15922, Nov. 28, 1964]

§102.107 Notice of petition, service of petition.

Upon filing a petition, the general counsel shall immediately serve a copy thereof on all parties and shall file a statement of service as provided by § 102.114(b) of these rules.

[51 FR 23749, July 1, 1986]

§102.108 Response to petition; service of response.

Any party to the representation or unfair labor practice case may, within 14 days after service thereof, respond to the petition, admitting or denying its allegations. Eight copies of such response shall be filed with the Board in Washington, D.C. Such response shall be printed or otherwise legibly duplicated: *Provided, however,* That carbon copies of typewritten materials will not be accepted. Such response shall be served on the general counsel and all other parties, and a statement of service shall be filed as provided by § 102.114(b) of these rules.

[51 FR 23749, July 1, 1986]

EFFECTIVE DATE NOTE: 29 CFR 102.107 and 102.108 were revised at 51 FR 23749, July 1, 1986. This revision becomes effective on September 29, 1986. For the convenience of the user, the superseded text reads as follows:

§ 102.107 Notice of petition; service of petition.

Upon filing a petition, the general counsel shall immediately serve a copy thereof upon all parties and shall file a statement of service as provided by § 102.113(b).

§ 102.108 Response to petition; service of response.

Any party to the representation or unfair labor practice case may, within 5 days after service thereof, respond to the petition, admitting or denying its allegations. Eight copies of such response shall be filed with the Board in Washington, D.C. Such response shall be printed or otherwise legibly duplicated: *Provided, however,* That carbon copies shall not be filed and if submitted will not be accepted. Such response shall be served on the general counsel and all other

parties, and a statement of service shall be filed as provided by § 102.113(b).

[29 FR 15922, Nov. 28, 1964]

§ 102.109 Intervention.

Any person desiring to intervene shall make a motion for intervention, stating the grounds upon which such person claims to have an interest in the petition. Eight copies of such motion shall be filed with the Board in Washington, D.C. Such motion shall be printed or otherwise legibly duplicated: *Provided, however,* That carbon copies of typewritten matter shall not be filed and if submitted will not be accepted.

[29 FR 15922, Nov. 28, 1964]

§ 102.110 Proceedings before the Board; briefs; declaratory orders.

The Board shall thereupon proceed, upon the petition, responses, and submission of briefs, to determine whether, on the facts before it, the commerce operations of the employer involved are such that it would or would not assert jurisdiction over them. Such determination shall be made by a declaratory order, with like effect as in the case of other orders of the Board, and shall be served upon the parties. Any party desiring to file a brief shall file eight copies with the Board in Washington, D.C., with a statement that copies thereof are being served simultaneously on the other parties.

[29 FR 15922, Nov. 28, 1964]

Subpart I—Service and Filing of Papers

§ 102.111 Time computation.

(a) In computing any period of time prescribed or allowed by these rules, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next agency business day. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation.

(b) When the act or any of these rules require the filing of a motion, brief, exception, or other paper in any proceeding, such document must be received by the Board or the officer or agent designated to receive such matter before the close of business of the last day of the time limit, if any, for such filing or extension of time that may have been granted. In construing this section of the rules, the Board will accept as timely filed any document which is hand delivered to the Board on or before the due date or postmarked on the day before (or earlier than) the due date; documents which are postmarked on or after the due date are untimely: *Provided, however,* the following documents must be received on or before the close of business of the last day for filing:

(1) Charges filed pursuant to section 10(b) of the act (see also § 102.14).

(2) Applications for awards and fees and other expenses under the Equal Access to Justice Act.

(3) Objections to elections.

(4) Petitions to revoke subpoenas.

(5) Petitions filed pursuant to section 9(c) of the act.

[51 FR 23749, July 1, 1986]

§ 102.112 Date of service; date of filing.

The date of service shall be the day when the matter served is deposited in the United States mail or is delivered in person, as the case may be. The date of filing shall be the day when the matter is required to be received by the Board as provided by § 102.111.

[51 FR 23749, July 1, 1986]

§ 102.113 Methods of service of process and papers by the Board; proof of service.

(a) Charges, complaints and accompanying notices of hearing, final orders, administrative law judges' decisions, subpoenas, and other process and papers of the Board, its member, agent, or agency may be served personally or by registered or certified mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person re-

quired to be served. The verified return by the individual so serving the same, setting forth the manner of such service, shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered or certified and mailed or when telegraphed as aforesaid shall be proof of service of the same.

(b) Whenever these rules require or permit the service of pleadings or other papers upon a party, a copy shall also be served on any attorney or other representative of the party who has entered a written appearance in the proceeding on behalf of the party. If a party is represented by more than one attorney or representative, service upon any one of such persons in addition to the party shall satisfy this requirement.

[51 FR 23749, July 1, 1986]

§ 102.114 Service of papers by parties; proof of service.

(a) Service of papers by a party on the other parties shall be made by registered mail, or by certified mail, or in any manner provided for the service of papers in a civil action by the law of the State in which the hearing is pending. Except for charges, petitions, exceptions, briefs and other papers for which a time for both filing and response has been otherwise established, service on all parties shall be made in the same manner as that utilized in filing the paper with the Board, or in a more expeditious manner; however, when filing with the Board is accomplished by personal service the other parties shall be promptly notified of such action by telephone, followed by service of a copy by mail or telegraph. When service is made by registered mail, or by certified mail, the return post office receipt shall be proof of service. When service is made in any manner provided by the law of a State, proof of service shall be made in accordance with such law. Failure to comply with the requirements of this section relating to timeliness of service on other parties shall be a basis for either (1) a rejection of the document or (2) withholding or reconsidering any ruling on the subject matter raised by the document until after service has been made and the served party has had reasonable opportunity to respond.

(b) The person or party serving the papers or process on other parties in conformance with §§ 102.113 and 102.114(a) shall submit a written statement of service thereof to the Board stating the names of the parties served and the date and manner of service. Proof of service as defined in § 102.114(a) shall be required by the Board only if subsequent to the receipt of the statement of service a question is raised with respect to proper service. Failure to make proof of service does not affect the validity of the service.

[51 FR 23749, July 1, 1986]

EFFECTIVE DATE NOTE: 29 CFR 102.111 through 102.114 were revised at 51 FR 23749, July 1, 1986. This revision becomes effective on September 29, 1986. For the convenience of the user, the superseded text reads as follows:

§ 102.111 Service of process and papers; proof of service.

(a) Charges, complaints and accompanying notices of hearing, final orders, administrative law judges' decisions, and subpenas of the Board, its member, agent, or agency, may be served personally or by registered or certified mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same, setting forth the manner of such service, shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered or certified and mailed or when telegraphed as aforesaid shall be proof of service of the same.

(b) Whenever these rules require or permit the service of pleadings or other papers upon a party, a copy shall also be served on any attorney or other representative of the party who has entered a written appearance in the proceeding on behalf of the party. If a party is represented by more than one attorney or representative, service upon any one of such persons in addition to the party shall satisfy this requirement.

(c) Process and papers of the Board, other than those specifically named in paragraph (a) of this section, may be forwarded by certified mail. The return post office receipt therefor shall be proof of service of the same.

[National Labor Relations Act approved July 5, 1935, 49 Stat. 449; 29 U.S.C. 151-166,

as amended by Act of June 23, 1947 (61 Stat. 136; 29 U.S.C. Sup. 151-167), Act of Oct. 22, 1951 (65 Stat. 601; 29 U.S.C. 158, 159, 168), Act of Sept. 14, 1959 (73 Stat. 519; 29 U.S.C. 141-168), and Act of July 26, 1974 (88 Stat. 395-397; 29 U.S.C. 152, 158, 169, 183)]

[32 FR 9551, July 1, 1967]

§ 102.112 Same; by parties; proof of service.

Service of papers by a party on other parties shall be made by registered mail, or by certified mail, or in any manner provided for the service of papers in a civil action by the law of the State in which the hearing is pending. Except for charges, petitions, exceptions, briefs, and other papers for which a time for both filing and response has been otherwise established, service on all parties shall be made in the same manner as that utilized in filing the paper with the Board, or in a more expeditious manner; however, when filing with the Board is accomplished by personal service the other parties shall be promptly notified of such action by telephone, followed by service of a copy by mail or telegraph. When service is made by registered mail, or by certified mail, the return post office receipt shall be proof of service. When service is made in any manner provided by the law of a State, proof of service shall be made in accordance with such law. Failure to comply with the requirements of this section relating to timeliness of service on other parties shall be a basis for either (a) a rejection of the document or (b) withholding or reconsidering any ruling on the subject matter raised by the document until after service has been made and the served party has had reasonable opportunity to respond.

[37 FR 7693, Apr. 19, 1972]

§ 102.113 Date of service; filing of proof of service.

(a) The date of service shall be the day when the matter served is deposited in the United States mail or is delivered in person, as the case may be. In computing the time from such date, the provisions of § 102.114 apply.

(b) The person or party serving the papers or process on other parties in conformance with §§ 102.111 and 102.112 shall submit a written statement of service thereof to the Board stating the names of the parties served and the date and manner of service. Proof of service as defined in § 102.112 shall be required by the Board only if subsequent to the receipt of the statement of service a question is raised with respect to proper service. Failure to make proof of service does not affect the validity of the service.

§ 102.114 Time; additional time after service by mail.

(a) In computing any period of time prescribed or allowed by these rules, the day of the act, event, or default after which the designated period of time begins to run, is not to be included. The last day of the period so computed is to be included, unless it is a Sunday or a legal holiday, in which event the period runs until the end of the next day, which is neither a Sunday nor a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Sundays and holidays shall be excluded in the computation. For the purpose of this section a Saturday on which the Board's offices are not open for business shall be considered as a holiday, but a half holiday shall be considered as other days and not as a holiday. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after service of a notice or other paper upon him, and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period: *Provided, however,* That 3 days shall not be added if any extension of such time may have been granted.

(b) When the Act or any of these rules require the filing of a motion, brief, exception, or other paper in any proceeding, such document must be received by the Board or the officer or agent designated to receive such matter before the close of business of the last day of the time limit, if any, for such filing or extention of time that may have been granted.

Subpart J—Certification and Signature of Documents

§ 102.115 Certification of papers and documents.

The executive secretary of the Board or, in the event of his absence or disability, whosoever may be designated by the Board in his place and stead shall certify copies of all papers and documents which are a part of any of the files or records of the Board as may be necessary or desirable from time to time.

§ 102.116 Signature of orders.

The executive secretary or the associate executive secretary or, in the event of their absence or disability, whosoever may be designated by the Board in their place and stead is hereby authorized to sign all orders of the Board.

Subpart K—Records and Information

§ 102.117 Board materials and formal documents available for public inspection and copying; requests for described records; time limit for response; appeal from denial of request; fees for document search and duplication; files and records not subject to inspection.

(a)(1) The following materials are available to the public for inspection and copying during normal business hours: (i) All final opinions and orders made in the adjudication of cases; (ii) administrative staff manuals and instructions that affect any member of the public (excepting those establishing internal operating rules, guidelines, and procedures for the investigation, trial, and settlement of cases); (iii) a record of the final votes of each member of the Board in every agency proceeding; and (iv) a current index of final opinions and orders made in the adjudication of cases. Paragraphs (a)(1)(i) through (iv) of this section are available for inspection and copying during normal business hours at the Board's offices in Washington, D.C. Paragraphs (a)(1)(ii) and (iv) of this section are also available for inspection and copying during normal business hours at each regional, subregional, and resident office of the Board. Final opinions and orders made by regional directors in the adjudication of representation cases pursuant to the delegation of authority from the Board under section 3(b) of the Act are available to the public for inspection and copying in the original office where issued.

(2) Copies of forms prescribed by the Board for the filing of charges under section 10 or petitions under section 9 may be obtained without charge from any regional, subregional, or resident office of the Board.

(b)(1) The formal documents constituting the record in a case or proceeding are matters of official record and, until destroyed pursuant to applicable statutory authority, are available to the public for inspection and copying during normal business hours, at the appropriate regional office of the Board or at the Board's office in Washington, D.C., as the case may be.

(2) The executive secretary shall certify copies of the formal documents upon request made a reasonable time in advance of need and payment of lawfully prescribed costs.

(c)(1) Requests for the inspection and copying of records other than those specified in paragraphs (a) and (b) of this section must be in writing and must reasonably describe the record in a manner to permit its identification and location. The envelope and the letter should be clearly marked to indicate that it contains a request for records under the Freedom of Information Act (FOIA). The request must contain a specific statement assuming financial liability in accordance with paragraph (c)(2)(iv) of this section, for the direct costs of the search for the requested records and their duplication. If the request is for records in a regional or subregional office of the agency, it should be made to that regional or subregional office; if for records in the office of the general counsel and located in Washington, D.C., it should be made to the Freedom of Information officer, office of the general counsel, Washington, D.C.; and if for records in the offices of the Board in Washington, D.C., to the executive secretary of the Board, Washington, D.C. Requests made to other than the appropriate office will be forwarded to that office by the receiving office, but in that event the applicable time limit for response set forth in paragraph (c)(2) of this section shall be calculated from the date of receipt by the appropriate office.

(2)(i) Within 10 working days after receipt of a request by the appropriate office of the agency a determination shall be made whether to comply with such request, and the person making the request shall be notified in writing of that determination. If the determination is to comply with the request, the records shall be made promptly available to the person making the request, upon payment of any charges due in accordance with the provisions of paragraph (c)(2)(iv) of this section. If the determination is to deny the request, the notification shall set forth the reasons therefor and the name and title or position of each person responsible for the denial, and shall

notify the person making the request of the right to appeal the adverse determination under the provisions of paragraph (c)(2)(ii) of this section.

(ii) An appeal from an adverse determination made pursuant to paragraph (c)(2)(i) of this section must be filed within 20 working days of the receipt by the person of the notification of the adverse determination where the request is denied in its entirety; or, in the case of a partial denial, within 20 working days of the receipt of any records being made available pursuant to the request. If the adverse determination was made in a regional office, a subregional office, or by the Freedom of Information officer, office of the general counsel, the appeal shall be filed with the general counsel in Washington, D.C. If the adverse determination was made by the executive secretary of the Board, the appeal shall be filed with the chairman of the Board in Washington, D.C. Within 20 working days after the receipt of an appeal the chairman of the Board or the general counsel, as the case may be, shall make a determination with respect to such appeal and shall notify the person in writing. If the determination is to comply with the request, the records shall be made promptly available to the person making the request, upon receipt of payment of any charges due in accordance with the provisions of paragraph (c)(2)(iv) of this section. If on appeal the denial of the request for records is upheld in whole or in part, the person making the request shall be notified of the reasons for the determination, the name and title or position of each person responsible for the denial, and the provisions for judicial review of that determination under the provisions of 5 U.S.C. 552(4)(B). Even though no appeal is filed from a denial in whole or in part of a request for records by the person making the request, the chairman of the Board or the general counsel may, without regard to the time limit for filing of an appeal, sua sponte initiate consideration of an adverse determination under this appeal procedure by written notification to the person making the request. In such event the time limit for making the determination shall commence with the issuance of such notification.

(iii) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either paragraph (c)(2)(i) or (ii) of this section may be extended by written notice to the person requesting the record setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice or notices shall specify a date or dates that would result in an extension or extensions totaling more than 10 working days with respect to a particular request. As used in this subparagraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request:

(*a*) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(*b*) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request;

(*c*) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(iv) Persons requesting records from this agency shall be subject to a charge of fees for the direct cost of document search and duplication in accordance with the following schedules, procedures, and conditions:

(*a*) Schedule of charges:

(*1*) For each one-quarter hour or portion thereof of clerical time: $2.50

(*2*) For each one-quarter hour or portion thereof of professional time: $6.60

(*3*) For each sheet of duplication (not to exceed 8½ by 14 inches) of requested records: $0.10

(*4*) All other direct costs of search or duplication shall be charged to the requester in the same amount as incurred by the agency.

(*b*) Each request for records shall contain a specific statement assuming

financial liability, in full or to a specified maximum amount, for charges, in accordance with paragraph (c)(2)(iv)(*a*) of this section which may be incurred by the agency in responding to the request. If the anticipated charges exceed the maximum limit stated by the person making the request or if the request contains no assumption of financial liability for charges, the person shall be notified and afforded an opportunity to assume financial liability. The request for records shall not be deemed received for purposes of the applicable time limit for response until a written assumption of financial liability is received. When the anticipated charges exceed $50, the person making the request, upon notification, shall deposit 50 percent of the anticipated charges with the agency. The request shall not be deemed received for purposes of the applicable time limit for response until such deposit has been made.

(*c*) Charges may be imposed even though the search discloses no records responsive to the request, or none not exempt from disclosure. The imposition of charges may be waived for the convenience of the agency, and will be reduced or waived where the agency determines that furnishing the information can be considered as primarily benefiting the general public. The agency may, by agreement with the person making the request, make arrangements with commercial firms for required services to be charged directly to the requester.

(v) "Working days," as used in this subsection, means calendar days excepting Saturdays, Sundays, and legal holidays.

(d) Subject to the provisions of §§ 102.31(c) and 102.66(c), all files, documents, reports, memoranda, and records of the agency, falling within the exemptions specified in 5 U.S.C. 552(b), shall not be made available for inspection or copying, unless specifically permitted by the Board, its chairman, or its general counsel.

(e) An individual will be informed whether a system of records maintained by this agency contains a record pertaining to such individual. An inquiry should be made in writing or in person during normal business hours to the official of this agency designated for that purpose and at the address set forth in a notice of a system of records published by this agency, in a Notice of Systems of Government-wide Personnel Records published by the Civil Service Commission, or in a Notice of Government-wide System of Records published by the Department of Labor. Copies of such notices, and assistance in preparing an inquiry, may be obtained from any regional office of the Board or at the Board offices at 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570. The inquiry should contain sufficient information, as defined in the notice, to identify the record. Reasonable verification of identity of the inquirer, as described in paragraph (i) of this section, will be required to assure that information is disclosed to the proper person. The agency shall acknowledge the inquiry in writing within 10 days (excluding Saturdays, Sundays, and legal public holidays) and, wherever practicable, the acknowledgment shall supply the information requested. If, for good cause shown, the agency cannot supply the information within 10 days, the inquirer shall within that time period be notified in writing of the reasons therefor and when it is anticipated the information will be supplied. An acknowledgment will not be provided where the information is supplied within the 10-day period. If the agency refuses to inform an individual whether a system of records contains a record pertaining to an individual, the inquirer shall be notified in writing of that determination and the reasons therefor, and of the right to obtain review of that determination under the provisions of paragraph (j) of this section.

(f) An individual will be permitted access to records pertaining to such individual contained in any system of records described in the notices of systems of records published by this agency, or access to the accounting of disclosures from such records. The request for access must be made in writing or in person during normal business hours, to the person designated for that purpose and at the address set forth in the published notice of systems of records. Copies of such no-

tices, and assistance in preparing a request for access, may be obtained from any regional office of the Board or at the Board offices at 1717 Pennsylvania Avenue NW., Washington, D.C. 20570. Reasonable verification of the identity of the requester, as described in subsection (i) of this section, shall be required to assure that records are disclosed to the proper person. A request for access to records or the accounting of disclosures from such records shall be acknowledged in writing by the agency within 10 days of receipt (excluding Saturdays, Sundays, and legal public holidays) and, wherever practicable, the acknowledgement shall inform the requester whether or not access will be granted and, if so, the time and location at which the records or accounting will be made available. If access to the record or accounting is to be granted, the record or accounting will normally be provided within 30 days (excluding Saturdays, Sundays, and legal public holidays) of the request, unless for good cause shown the agency is unable to do so, in which case the individual will be informed in writing within that 30-day period of the reasons therefor and when it is anticipated that access will be granted. An acknowledgement of a request will not be provided if the record is made available within the 10-day period. If an individual's request for access to a record or an accounting of disclosures from such a record under the provisions of this subsection is denied, the notice informing the individual of the denial shall set forth the reasons therefor and advise the individual of the right to obtain a review of that determination under the provisions of paragraph (j) of this section.

(g) An individual granted access to records pertaining to such individual contained in a system of records may review all such records. For that purpose the individual may be accompanied by a person of the individual's choosing, or the record may be released to the individual's representative who has the written consent of the individual, as described in paragraph (i) of this section. A first copy of any such record or information will ordinarily be provided without charge to the individual or representative in a form comprehensible to the individual. Fees for any other copies of requested records shall be assessed at the rate of $0.10 for each sheet of duplication.

(h) An individual may request amendment of a record pertaining to such individual in a system of records maintained by this agency. A request for amendment of a record must be in writing and submitted during normal business hours to the person designated for that purpose and at the address set forth in the published notice for the system of records containing the record of which amendment is sought. Copies of such notices, and assistance in preparing a request for amendment, may be obtained from any regional office of the Board or at the Board offices at 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570. The requester must provide verification of identity as described in paragraph (i) of this section, and the request should set forth the specific amendment requested and the reason for the requested amendment. The agency shall acknowledge in writing receipt of the request within 10 days of its receipt (excluding Saturdays, Sundays, and legal public holidays) and, wherever practicable, the acknowledgment shall advise the individual of the determination of the request. If the review of the request for amendment cannot be completed and a determination made within 10 days, the review shall be completed as soon as possible, normally within 30 days (Saturdays, Sundays, and legal public holidays excluded) of receipt of the request unless unusual circumstances preclude completing the review within that time, in which event the requester will be notified in writing within that 30-day period of the reasons for the delay and when the determination of the request may be expected. If the determination is to amend the record, the requester shall be so notified in writing and the record shall be amended in accordance with that determination. If any disclosures accountable under the provisions of 5 U.S.C. 552a(c) have been made, all previous recipients of the record which was amended shall be advised of the amendment and its substance. If it is determined that the request should not be granted, the requester shall be

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notified in writing of that determination and of the reasons therefor, and advised of the right to obtain review of the adverse determination under the provisions of paragraph (j) of this section.

(i) Verification of the identification of individuals required under paragraphs (e), (f), (g), and (h) of this section to assure that records are disclosed to the proper persons shall be required by the agency to an extent consistent with the nature, location, and sensitivity of the records being disclosed. Disclosure of a record to an individual in person will normally be made upon the presentation of acceptable identification. Disclosure of records by mail may be made upon the basis of the identifying information set forth in the request. Depending upon the nature, location, and sensitivity of the requested record, a signed notarized statement verifying identity may be required by the agency. Proof of authorization as representative to have access to a record of an individual shall be in writing, and a signed notarized statement of such authorization may be required by the agency if the record requested is of a sensitive nature.

(j)(1) Review may be obtained with respect to (i) a refusal, under paragraph (e) or (k) of this section, to inform an individual if a system of records contains a record concerning that individual, (ii) a refusal, under paragraph (f) or (k) of this section, to grant access to a record or an accounting of disclosures from such a record, or (iii) a refusal, under paragraph (h) of this section, to amend a record. The request for review should be made to the chairman of the Board if the system of records is maintained in the offices of a member of the Board, the office of the executive secretary, the office of the solicitor, the division of information, or the division of administrative law judges. Consonant with the provisions of section 3(d) of the National Labor Relations Act, as amended, and the delegation of authority from the Board to the general counsel, the request should be made to the general counsel if the system of records is maintained by any office of the agency other than those enumerated above. Either the chairman of the Board or the general counsel may designate in writing another officer of the agency to review the refusal of the request. Such review shall be completed within 30 days (excluding Saturdays, Sundays, and legal public holidays) from the receipt of the request for review unless the chairman of the Board or the general counsel, as the case may be, for good cause shown, shall extend such 30-day period.

(2) If, upon review of a refusal under paragraph (e) or (k) of this section, the reviewing officer determines that the individual should be informed of whether a system of records contains a record pertaining to that individual; such information shall be promptly provided. If the reviewing officer determines that the information was properly denied, the individual shall be so informed in writing with a brief statement of the reasons therefor.

(3) If, upon review of a refusal under paragraph (f) or (k) of this section, the reviewing officer determines that access to a record or to an accounting of disclosures should be granted, the requester shall be so notified and the record or accounting shall be promptly made available to the requester. If the reviewing officer determines that the request for access was properly denied, the individual shall be so informed in writing with a brief statement of the reasons therefor, and of the right to judicial review of that determination under the provisions of 5 U.S.C. 552a(g)(1)(B).

(4) If, upon review of a refusal under subsection (h), the reviewing official grants a request to amend, the requester shall be so notified, the record shall be amended in accordance with the determination, and, if any disclosures accountable under the provisions of 5 U.S.C. 552a(c) have been made, all previous recipients of the record which was amended shall be advised of the amendment and its substance. If the reviewing officer determines that the denial of a request for amendment should be sustained, the agency shall advise the requester of the determination and the reasons therefor, and that the individual may file with the agency a concise statement of the reasons for disagreeing with the determi-

nation, and may seek judicial review of the agency's denial of the request to amend the record. In the event a statement of disagreement is filed, that statement (i) will be made available to anyone to whom the record is subsequently disclosed together with, at the discretion of the agency, a brief statement summarizing the agency's reasons for declining to amend the record, and (ii) will be supplied, together with any agency statements, to any prior recipients of the disputed record to the extent that an accounting of disclosures was made.

(k) To the extent that portions of systems of records described in notices of governmentwide systems of records published by the Civil Service Commission are identified by those notices as being subject to the management of an officer of this agency, or an officer of this agency is designated as the official to contact for information, access or contest of those records, individual requests for access to those records, requests for their amendment, and review of denials of requests for amendment shall be in accordance with the provisions of 5 CFR Part 297, Subpart A, § 297.101, *et seq.*, as promulgated by the Civil Service Commission. To the extent that portions of systems of records described in notices of governmentwide systems of records published by the Department of Labor are identified by those notices as being subject to the management of an officer of this agency, or an officer of this agency is designated as the official to contact for information, access or contest of those records, individual requests for access to those records, requests for their amendment, and review of denials of requests for amendment shall be in accordance with the provisions of 29 CFR Part 70a as promulgated by the Department of Labor. Review of a refusal to inform an individual whether such a system of records contains a record pertaining to that individual, and review of a refusal to grant an individual's request for access to a record in such a system may be obtained in accordance with the provisions of paragraph (j) of this section.

[40 FR 7290, Feb. 19, 1975, as amended at 40 FR 48330, Oct. 14, 1975; 41 FR 1478, Jan. 8, 1976; 51 FR 3597, Jan. 29, 1986]

§ 102.118 Board employees prohibited from producing files, records, etc., pursuant to subpoena ad testificandum or subpoena duces tecum; prohibited from testifying in regard thereto; production of witnesses' statements after direct testimony.

(a)(1) Except as provided in § 102.117 respecting requests cognizable under the Freedom of Information Act, no regional director, field examiner, administrative law judge, attorney, specially designated agent, general counsel, member of the Board, or other officer or employee of the Board shall produce or present any files, documents, reports, memoranda, or records of the Board or of the general counsel, whether in response to a subpoena duces tecum or otherwise, without the written consent of the Board or the chairman of the Board if the document is in Washington, D.C., and in control of the Board; or of the general counsel if the document is in a regional office of the agency or is in Washington, D.C., and in the control of the general counsel. Nor shall any such person testify in behalf of any party to any cause pending in any court or before the Board, or any other board, commission, or other administrative agency of the United States, or of any State, territory, or the District of Columbia, or any subdivisions thereof, with respect to any information, facts, or other matter coming to his knowledge in his official capacity or with respect to the contents of any files, documents, reports, memoranda, or records of the Board or the general counsel, whether in answer to a subpoena or otherwise, without the written consent of the Board or the chairman of the Board if the person is in Washington, D.C., and subject to the supervision or control of the Board; or of the general counsel if the person is in a regional office of the agency or is in Washington, D.C., and subject to the supervision or control of the general counsel.

(2) No regional director, field examiner, administrative law judge, attorney, specially designated agent, gener-

al counsel, member of the Board, or other officer or employee of the Board shall, by any means of communication to any person or to another agency, disclose personal information about an individual from a record in a system of records maintained by this agency, as more fully described in the notices of systems of records published by this agency in accordance with the provisions of section (e)(4) of the Privacy Act of 1974, 5 U.S.C. 552a(e)(4), or by the Notices of Government-wide Systems of Personnel Records published by the Civil Service Commission in accordance with those statutory provisions, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be in accordance with the provisions of section (b)(1) through (11), both inclusive, of the Privacy Act of 1974, 5 U.S.C. 552a(b)(1) through (11).

(b)(1) Notwithstanding the prohibitions of paragraph (a) of this section, after a witness called by the general counsel or by the charging party has testified in a hearing upon a complaint under section 10(c) of the act, the trial examiner shall, upon motion of the respondent, order the production of any statement (as hereinafter defined) of such witness in the possession of the general counsel which relates to the subject matter as to which the witness has testified. If the entire contents of any such statement relate to the subject matter of the testimony of the witness, the administrative law judge shall order it to be delivered directly to the respondent for his examination and use for the purpose of cross-examination.

(2) If the general counsel claims that any statement ordered to be produced under this section contains matter which does not relate to the subject matter of the testimony of the witness, the administrative law judge shall order the general counsel to deliver such statement for the inspection of the administrative law judge in camera. Upon such delivery the administrative law judge shall excise the portions of such statement which do not relate to the subject matter of the testimony of the witness except that he may, in his discretion, decline to excise portions which, although not relating to the subject matter of the testimony of the witness, do relate to other matters raised by the pleadings. With such material excised the administrative law judge shall then direct delivery of such statement to the respondent for his use on cross-examination. If, pursuant to such procedure, any portion of such statement is withheld from the respondent and the respondent objects to such withholdings, the entire text of such statement shall be preserved by the general counsel, and, in the event the respondent files exceptions with the Board based upon such withholding, shall be made available to the Board for the purpose of determining the correctness of the ruling of the administrative law judge. If the general counsel elects not to comply with an order of the administrative law judge directing delivery to the respondent of any such statement, or such portion thereof as the administrative law judge may direct, the administrative law judge shall strike from the record the testimony of the witness.

(c) The provisions of paragraph (b) of this section shall also apply after any witness has testified in any post-election hearing pursuant to § 102.69(d) and any party has moved for the production of any statement (as hereinafter defined) of such witness in possession of any agent of the Board which relates to the subject matter as to which the witness has testified. The authority exercised by the administrative law judge under paragraph (b) of this section shall be exercised by the hearing officer presiding.

(d) The term "statement" as used in paragraphs (b) and (c) of this section means: (1) A written statement made by said witness and signed or otherwise adopted or approved by him; or (2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by said witness to an agent of the party obligated to produce the statement and recorded contemporaneously with the making of such oral statement.

[33 FR 9819, July 9, 1968, as amended at 35 FR 10658, July 1, 1970; 40 FR 7291, Feb. 19, 1975; 40 FR 50662, Oct. 30, 1975]

Subpart L—Practice Before the Board of Former Employees [1]

§ 102.119 Prohibition of practice before Board of its former regional employees in cases pending in region during employment.

No person who has been an employee of the Board and attached to any of its regional offices shall engage in practice before the Board or its agents in any respect or in any capacity in connection with any case or proceeding which was pending in any regional office to which he was attached during the time of his employment with the Board.

[28 FR 7975, Aug. 6, 1963]

§ 102.120 Same; application to former employees of Washington staff.

No person who has been an employee of the Board and attached to the Washington staff shall engage in practice before the Board or its agents in any respect or in any capacity in connection with any case or proceeding pending before the Board or any regional offices during the time of his employment with the Board.

[28 FR 7975, Aug. 6, 1963]

Subpart M—Construction of Rules

§ 102.121 Rules to be liberally construed.

The rules and regulations in this part shall be liberally construed to effectuate the purposes and provisions of the act.

[1] Attention is directed to Pub. L. 87-849 (76 Stat. 1119) which amends Chapter 11 of Title 18, U. S. Code, entitled "Bribery, Graft and Conflicts of Interest" and which provides for the imposition of criminal sanctions under certain circumstances.

Subpart N—Enforcement of Rights, Privileges, and Immunities Granted or Guaranteed Under Section 222(f), Communications Act of 1934, as Amended, to Employees of Merged Telegraph Carriers

§ 102.122 Enforcement.

All matters relating to the enforcement of rights, privileges, or immunities granted or guaranteed under section 222(f) of the Communications Act of 1934, as amended, shall be governed by the provisions of Subparts A, B, I, J, K, and M of this part, insofar as applicable, except that reference in Subpart B of this part to "unfair labor practices" or "unfair labor practices affecting commerce" shall for the purposes of this article mean the denial of any rights, privileges, or immunities granted or guaranteed under section 222(f) of the Communications Act of 1934, as amended.

§ 102.123 Amendment or rescission of rules.

Any rule or regulation may be amended or rescinded by the Board at any time.

Subpart O—Amendments

§ 102.124 Petitions for issuance, amendment, or repeal of rules.

Any interested person may petition the Board, in writing, for the issuance, amendment, or repeal of a rule or regulation. An original and seven copies of such petition shall be filed with the Board in Washington, D.C., and shall state the rule or regulation proposed to be issued, amended, or repealed, together with a statement of grounds in support of such petition.

[29 FR 15922, Nov. 28, 1964]

§ 102.125 Action on petition.

Upon the filing of such petition, the Board shall consider the same and may thereupon either grant or deny the petition in whole or in part, conduct an appropriate hearing thereon, or make other disposition of the petition. Should the petition be denied in whole or in part, prompt notice shall

be given of the denial, accompanied by a simple statement of the grounds unless the denial is self-explanatory.

Subpart P—Ex Parte Communications

AUTHORITY: Sec. 6, National Labor Relations Act, as amended (49 Stat. 452; 29 U.S.C. 156).

SOURCE: 42 FR 13113, Mar. 8, 1977, unless otherwise noted.

§ 102.126 Unauthorized communications.

(a) No interested person outside this agency shall, in an on-the-record proceeding of the types defined in § 102.128, make or knowingly cause to be made any prohibited ex parte communication to Board agents of the categories designated in that section relevant to the merits of the proceeding.

(b) No Board agent of the categories defined in § 102.128, participating in a particular proceeding as defined in that section, shall (i) request any prohibited ex parte communications; or (ii) make or knowingly cause to be made any prohibited ex parte communications about the proceeding to any interested person outside this agency relevant to the merits of the proceeding.

§ 102.127 Definitions.

When used in this subpart:

(a) The term "person outside this agency," to whom the prohibitions apply, shall include any individual outside this agency, partnership, corporation, association, or other entity, or an agent thereof, and the general counsel or his representative when prosecuting an unfair labor practice proceeding before the Board pursuant to section 10(b) of the Act.

(b) The term "ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, subject however, to the provisions of §§ 102.129 and 102.130.

§ 102.128 Types of on-the-record proceedings; categories of Board agents; and duration of prohibition.

Unless otherwise provided by specific order of the Board entered in the proceeding, the prohibition of § 102.126 shall be applicable in the following types of on-the-record proceedings to unauthorized ex parte communications made to the designated categories of Board agents who participate in the decision, from the stage of the proceeding specified until the issues are finally resolved by the Board for the purposes of that proceeding under prevailing rules and practices:

(a) In a preelection proceeding pursuant to section 9(c)(1) or 9(e), or in a unit clarification or certification amendment proceeding pursuant to section 9(b) of the Act, in which a formal hearing is held, communications to the regional director and members of his staff who review the record and prepare a draft of his decision, and members of the Board and their legal assistants, from the time the hearing is opened.

(b) In a postelection proceeding pursuant to section 9(c)(1) or 9(e) of the Act, in which a formal hearing is held, communications to the hearing officer, the regional director and members of his staff who review the record and prepare a draft of his report or decision, and members of the Board and their legal assistants, from the time the hearing is opened.

(c) In a postelection proceeding pursuant to section (c)(1) or 9(e), or in a unit clarification or certification amendment proceeding pursuant to section 9(b) of the Act, in which no formal hearing is held, communications to members of the Board and their legal assistants, from the time the regional director's report or decision is issued.

(d) In a proceeding pursuant to section 10(k) of the Act, communications to members of the Board and their legal assistants, from the time the hearing is opened.

(e) In an unfair labor practice proceeding pursuant to section 10(b) of the Act, communications to the administrative law judge assigned to hear the case or to make rulings upon any motions or issues therein and members of the Board and their legal assistants, from the time the complaint and/or notice of hearing is issued, or the time the communicator has knowledge that a complaint or

notice of hearing will be issued, whichever occurs first.

(f) In any other proceeding to which the Board by specific order makes the prohibition applicable, to the categories of personnel and from the stage of the proceeding specified in the order.

§ 102.129 Communications prohibited.

Except as provided in § 102.130, ex parte communications prohibited by § 102.126 shall include:

(a) Such communications, when written, if copies thereof are not contemporaneously served by the communicator on all parties to the proceeding in accordance with the provisions of § 102.112.

(b) Such communications, when oral, unless advance notice thereof is given by the communicator to all parties in the proceeding and adequate opportunity afforded to them to be present.

§ 102.130 Communications not prohibited.

Ex parte communications prohibited by § 102.126 shall not include:

(a) Oral or written communications which relate solely to matters which the hearing officer, regional director, administrative law judge, or member of the Board is authorized by law or Board rules to entertain or dispose of on an ex parte basis.

(b) Oral or written requests for information solely with respect to the status of a proceeding.

(c) Oral or written communications which all the parties to the proceeding agree, or which the responsible official formally rules, may be made on an ex parte basis.

(d) Oral or written communications proposing settlement or an agreement for disposition of any or all issues in the proceeding.

(e) Oral or written communications which concern matters of general significance to the field of labor-management relations or administrative practice and which are not specifically related to pending on-the-record proceedings.

(f) Oral or written communications from the general counsel to the Board when the general counsel is acting as counsel for the Board.

§ 102.131 Solicitation of prohibited communications.

No person shall knowingly and willfully solicit the making of an unauthorized ex parte communication by any other person.

§ 102.132 Reporting of prohibited communications; penalties.

(a) Any Board agent of the categories defined in § 102.128 to whom a prohibited oral ex parte communication is attempted to be made shall refuse to listen to the communication, inform the communicator of this rule, and advise him that if he has anything to say it should be said in writing with copies to all parties. Any such board agent who receives, or who makes or knowingly causes to be made, an unauthorized ex parte communication shall place or cause to be placed on the party to a proceeding, or to participate public record of the proceeding (1) the communication, if it was written, (2) a memorandum stating the substance of the communication, if it was oral, (3) all written responses to the prohibited communication, and (4) memoranda stating the substance of all oral responses to the prohibited communication. The executive secretary, if the proceeding is then pending before the Board, the administrative law judge, if the proceeding is then pending before any such judge, or the regional director, if the proceeding is then pending before a hearing officer or the regional direcor, shall serve copies of all such materials placed on the public record of the proceeding on all other parties to the proceeding and on the attorneys of record for the parties. Within 10 days after the mailing of such copies, any party may file with the executive secretary, administrative law judge, or regional director serving the communication, and serve on all other parties, a statement setting forth facts or contentions to rebut those contained in the prohibited communication. All such responses shall be placed in the public record of the proceeding, and provision may be made for any further action, including reopening of the record, which may be required under the circumstances. No action taken pursuant to this provision shall

constitute a waiver of the power of the Board to impose an appropriate penalty under § 102.133

[42 FR 15410, Mar. 22, 1977]

§ 102.33 Penalties and enforcement

(a) Where the nature and circumstances of a prohibited communication made by or caused to be made by a party to the proceeding are such that the interests of justice and statutory policy may require remedial action, the Board, administrative law judge, or regional director, as the case may be, may issue to the party making the communication a notice to show cause, returnable before the Board within a stated period not less than 7 days from the date thereof, why the Board should not determine that the interests of justice and statutory policy require that the claim or interest in the proceeding of a party who knowingly makes a prohibited communication or knowingly causes a prohibited communication to be made, should be dismissed, denied, disregarded or otherwise adversely affected on account of such violation.

(b) Upon notice and hearing, the Board may censure, suspend, or revoke the privilege of practice before the agency of any person who knowingly and willfully makes or solicits the making of a prohibited ex parte communication. However, before the Board institutes formal proceedings under this subsection, it shall first advise the person or persons concerned in writing that it proposes to take such action and that they may show cause, within a period to be stated in such written advice, but not less than 7 days from the date thereof, why it should be take such action.

(c) The Board may censure, or, to the extent permitted by law, suspend, dismiss, or institute proceedings for the dismissal of, any Board agent who knowingly and willfully violates the prohibitions and requirements of this rule.

[42 FR 15410, Mar. 22, 1977]

Subpart Q—Procedure Governing Matters Affecting Employment-Management Agreements Under the Postal Reorganization Act

§ 102.135 Employment-management agreements.

(a) *Employment-management agreements.* All matters within the jurisdiction of the National Labor Relations Board pursuant to the Postal Reorganization Act (Chapter 12 of Title 39, U.S. Code, as revised) shall be governed by the provisions of Subparts A, B, C, D, F, G, I, J, K, L, M, O, and P of the rules and regulations insofar as applicable.

(b) *Inconsistencies.* To the extent that any provision of this Subpart Q is inconsistent with any provision of Title 39, United States Code, the provision of said Title 39 shall govern.

(c) *Exceptions.* For the purposes of this subpart, references in the subparts of the rules and regulations cited above to (1) "employer" shall be deemed to include the Postal Service, (2) "Act" shall in the appropriate context mean "Postal Reorganization Act," (3) "section 9(c) of the Act" and cited paragraphs thereof shall mean "39 U.S.C. secs. 1203(c) and 1204," and (4) "section 9(b) of the Act" shall mean "39 U.S.C. sec. 1202."

[36 FR 12532, July 1, 1971]

Subpart R—Advisory Committees

§ 102.136 Establishment and utilization of advisory committees.

Advisory committees may from time to time be established or utilized by the agency in the interest of obtaining advice or recommendations on issues of concern to the agency. The establishment, utilization, and functioning of such committees shall be in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. app. I, sections 1-15, and Office of Management and Budget Circular A-63 (rev. March 27, 1975), Advisory Committee Management Guidance, 39 FR 12389-12391, to the extent applicable.

(49 Stat. 449 (29 U.S.C. 151-166, as amended by Act of June 23, 1947) 61 Stat. 136 (29

U.S.C. Supp. 151-167), act of October 22, 1951, 65 Stat. 601 (29 U.S.C. 158, 159, 168), and Act of September 14, 1959 73 Stat. 519; 29 U.S.C. 141-168); 86 Stat. 770; (5 U.S.C. Appendix I, section 1 *et seq.*))

[40 FR 59728, Dec. 30, 1975]

Subpart S—Open Meetings

AUTHORITY: Sec. 6, National Labor Relations Act, as amended (49 Stat. 452; 29 U.S.C. 156) and sec. 3(a), Government in the Sunshine Act, Pub. L. 94-409, Sept. 13, 1976, 5 U.S.C. 552b(g).

SOURCE: 42 FR 13550, Mar. 11, 1977, unless otherwise noted.

§ 102.137 Public observation of Board meetings.

Every portion of every meeting of the Board shall be open to public observation, except as provided in § 102.139 of these rules, and Board members shall not jointly conduct or dispose of agency business other than in accordance with the provisions of this subpart.

§ 102.138 Definition of meeting.

For purposes of this subpart, "meeting" shall mean the deliberations of at least three members of the full Board, or the deliberations of at least two members of any group of three Board members to whom the Board has delegated powers which it may itself exercise, where such deliberations determine or result in the joint conduct or disposition of official agency business, but does not include deliberations to determine whether a meeting should be closed to public observation in accordance with the provisions of this subpart.

§ 102.139 Closing of meetings; reasons therefor.

(a) Except where the Board determines that the public interest requires otherwise, meetings, or portions thereof, shall not be open to public observation where the deliberations concern the issuance of a subpoena, the Board's participation in a civil action or proceeding or an arbitration, or the initiation, conduct or disposition by the Board of particular representation or unfair labor practice proceedings under sections 8, 9, or 10 of the Act, or any court proceedings collateral or ancillary thereto.

(b) Meetings, or portions thereof, may also be closed by the Board, except where it determines that the public interest requires otherwise, when the deliberations concern matters or information falling within the reasons for closing meetings specified in 5 U.S.C. 552b(c)(1) (secret matters concerning national defense or foreign policy); (c)(2) (internal personnel rules and practices); (c)(3) (matters specifically exempted from disclosure by statute); (c)(4) (privileged or confidential trade secrets and commercial or financial information); (c)(5) (matters of alleged criminal conduct or formal censure); (c)(6) (personal information where disclosure would cause a clearly unwarranted invasion of personal privacy); (c)(7) (certain materials or information from investigatory files compiled for law enforcement purposes); or (c)(9)(B) (disclosure would significantly frustrate implementation of a proposed agency action).

§ 102.140 Action necessary to close meetings; record of votes.

A meeting shall be closed to public observation under § 102.139, only when a majority of the members of the Board who will participate in the meeting vote to take such action.

(a) When the meeting deliberations concern matters specified in § 102.139(a), the Board members shall vote at the beginning of the meeting, or portion thereof, on whether to close such meeting, or portion thereof, to public observation, and on whether the public interest requires that a meeting which may properly be closed should nevertheless be open to public observation. A record of such vote, reflecting the vote of each member of the Board, shall be kept and made available to the public at the earliest practicable time.

(b) When the meeting deliberations concern matters specified in § 102.139(b), the Board shall vote on whether to close such meeting, or portion thereof, to public observation, and on whether there is a public interest which requires that a meeting which may properly be closed should

nevertheless be open to public observation. The vote shall be taken at a time sufficient to permit inclusion of information concerning the open or closed status of the meeting in the public announcement thereof. A single vote may be taken with respect to a series of meetings at which the deliberations will concern the same particular matters where such subsequent meetings are scheduled to be held within thirty days after the initial meeting. A record of such vote, reflecting the vote of each member of the Board, shall be kept and made available to the public within one day after the vote is taken.

(c) Whenever any person whose interests may be directly affected by deliberations during a meeting, or a portion thereof, requests that the Board close that meeting, or portion thereof, to public observation for any of the reasons specified in 5 U.S.C. 552b(c)(5) (matters of alleged criminal conduct or formal censure), (c)(6) (personal information where disclosure would cause a clearly unwarranted invasion of personal privacy), or (c)(7) (certain materials or information from investigatory files compiled for law enforcement purposes), the Board members participating in the meeting, upon request of any one of its members, shall vote on whether to close such meeting, or a portion thereof, for that reason. A record of such vote, reflecting the vote of each member of the Board participating in the meeting shall be kept and made available to the public within one day after the vote is taken.

(d) After public announcement of a meeting as provided in § 102.141 of this part, a meeting, or portion thereof, announced as closed may be opened, or a meeting, or portion thereof, announced as open may be closed, only if a majority of the members of the Board who will participate in the meeting determine by a recorded vote that Board business so requires and that an earlier announcement of the change was not possible. The change made and the vote of each member on the change shall be announced publicly at the earliest practicable time.

(e) Before a meeting may be closed pursuant to § 102.139, the solicitor of the Board shall certify that in his or her opinion the meeting may properly be closed to public observation. The certification shall set forth each applicable exemptive provision for such closing. Such certification shall be retained by the agency and made publicly available as soon as practicable.

§ 102.141 Notice of meetings; public announcement and publication.

(a) A public announcement setting forth the time, place and subject matter of meetings or portions thereof closed to public observation pursuant to the provisions of § 102.139(a) of this part, shall be made at the earliest practicable time.

(b) Except for meetings closed to public observation pursuant to the provisions of § 102.139(a) of this part, the agency shall make public announcement of each meeting to be held at least 7 days before the scheduled date of the meeting. The announcement shall specify the time, place and subject matter of the meeting, whether it is to be open to public observation or closed, and the name, address, and phone number of an agency official designated to respond to requests for information about the meeting. The 7 day period for advance notice may be shortened only upon a determination by a majority of the members of the Board who will participate in the meeting that agency business requires that such meeting be called at an earlier date, in which event the public announcements shall be made at the earliest practicable time. A record of the vote to schedule a meeting at an earlier date shall be kept and made available to the public.

(c) Within one day after a vote to close a meeting, or any portion thereof, pursuant to the provisions of § 102.139(b) of this part, the agency shall make publicly available a full written explanation of its action closing the meeting, or portion thereof, together with a list of all persons expected to attend the meeting and their affiliation.

(d) If after public announcement required by paragraph (b) of this section has been made, the time and place of the meeting are changed, a public announcement shall be made at the ear-

liest practicable time. The subject matter of the meeting may be changed after the public announcement only if a majority of the members of the Board who will participate in the meeting determine that agency business so requires and that no earlier announcement of the change was possible. When such a change in subject matter is approved a public announcement of the change shall be made at the earliest practicable time. A record of the vote to change the subject matter of the meeting shall be kept and made available to the public.

(e) All announcements or changes thereto issued pursuant to the provisions of paragraphs (b) and (d) of this section, or pursuant to the provisions of § 102.140(d), shall be submitted for publication in the FEDERAL REGISTER immediately following their release to the public.

(f) Announcements of meetings made pursuant to the provisions of this section shall be made publicly available by the executive secretary.

§ 102.142 Transcripts, recordings or minutes of closed meetings; public availability; retention.

(a) For every meeting or portion thereof closed under the provisions of § 102.139 of this part, the presiding officer shall prepare a statement setting forth the time and place of the meeting and the persons present, which statement shall be retained by the agency. For each such meeting or portion thereof there shall also be maintained a complete transcript or electronic recording of the proceedings, except that for meetings closed pursuant to § 102.139(a) the Board may, in lieu of a transcript or electronic recording, maintain a set of minutes fully and accurately summarizing any action taken, the reasons thereof and views thereon, documents considered, and the members' vote on each roll call vote.

(b) The agency shall make promptly available to the public copies of transcripts, recordings or minutes maintained as provided in accordance with paragraph (a) of this section, except to the extent the items therein contain information which the agency determines may be withheld pursuant to the provisions of 5 U.S.C. 552(c). Copies of transcripts or minutes, or transcriptions of electronic recordings including the identification of speakers, shall to the extent determined to be publicly available, be furnished to any person, subject to the payment of duplication costs in accordance with the schedule of fees set forth in § 102.117(c)(2)(iv), and the actual cost of transcription.

(c) The agency shall maintain a complete verbatim copy of the transcript, a complete electronic recording, or a complete set of the minutes for each meeting or portion thereof closed to the public, for a period of at least one year after the close of the agency proceeding of which the meeting was a part, but in no event for a period of less than two years after such meeting.

Subpart T—Awards of Fees and Other Expenses

AUTHORITY: Equal Access to Justice Act, Pub. L. 96-481, 94 Stat. 2325.

SOURCE: 46 FR 48087, Sept. 30, 1981, unless otherwise noted.

§ 102.143 "Adversary adjudication" defined; entitlement to award; eligibility for award.

(a) The term "adversary adjudication," as used in this subpart, means unfair labor practice proceedings pending before the Board on complaint, and backpay proceedings under §§ 102.52 to 102.59 of these rules pending before the Board on notice of hearing, at any time between October 1, 1981, and September 30, 1984.

(b) A respondent in an adversary adjudication who prevails in that proceeding, or in a significant and discrete substantive portion of that proceeding, and who otherwise meets the eligibility requirements of this section, is eligible to apply for an award of fees and other expenses allowable under the provisions of § 102.145 of these rules.

(c) Applicants eligible to receive an award are as follows:

(1) An individual with a net worth of not more than $2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees; and

(5) Any other partnership, corporation, association, unit of local government, or public or private organization with a net worth of not more than $7 million and not more than 500 employees.

(d) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date of the complaint in an unfair labor practice proceeding or the date of the notice of hearing in a backpay proceeding.

(e) An applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(f) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(g) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this part, unless such treatment would be unjust and contrary to the purposes of the Equal Access to Justice Act (94 Stat. 2325) in light of the actual relationship between the affiliated entities. In addition financial relationships of the applicant other than those described in this paragraph may constitute special circumstances that would make an award unjust.

(h) An applicant that participates in an adversary adjudication primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

[46 FR 48087, Sept. 30, 1981, as amended at 51 FR 17733, May 15, 1986]

§ 102.144 Standards for awards.

(a) An eligible applicant may receive an award for fees and expenses incurred in connection with an adversary adjudication or in connection with a significant and discrete substantive portion of that proceeding, unless the position of the General Counsel over which the applicant has prevailed was substantially justified. The burden of proof that an award should not be made to an eligible applicant is on the General Counsel, who may avoid an award by showing that the General Counsel's position in the proceeding was substantially justified.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the adversary adjudication or if special circumstances make the award sought unjust.

[46 FR 48087, Sept. 30, 1981, as amended at 51 FR 17733, May 15, 1986]

§ 102.145 Allowable fees and expenses.

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents and expert witnesses, even if the services were made available without charge or at a reduced rate to the applicant.

(b) No award for the attorney or agent fees under these rules may exceed $75.00 per hour. However, an award may also include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent or expert witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney,

agent or expert witness, the following matters shall be considered:

(1) If the attorney, agent or expert witness is in practice, his or her customary fee for similar services, or, if an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent or expert witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the adversary adjudicative proceeding; and

(d) the reasonable cost of any study, analysis, engineering report, test, project or similar matter prepared on behalf of an applicant may be awarded, to the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of the applicant's case.

§ 102.146 Rulemaking on maximum rates for attorney or agent fees.

Any person may file with the Board a petition under § 102.124 of these rules for rulemaking to increase the maximum rate for attorney or agent fees. The petition should specify the rate the petitioner believes should be established and explain fully why the higher rate is warranted by an increase in the cost of living or a special factor (such as the limited availability of qualified attorneys or agents for the proceedings involved).

§ 102.147 Contents of application; net worth exhibit; documentation of fees and expenses.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the adversary adjudication for which an award is sought. The application shall state the particulars in which the applicant has prevailed and identify the positions of the General Counsel in that proceeding that the applicant alleges were not substantially justified. Unless the applicant is an individual, the application shall also state the number, category and work location of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application shall include a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

(c) The application shall state the amount of fees and expenses for which an award is sought.

(d) The application may also include any other matters that the applicant wishes this Agency to consider in determining whether and in what amount an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true.

(f) Each applicant, except a qualified tax-exempt organization or cooperative association, must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 102.143(g)) when the adversary adjudicative proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The administrative law judge may require an applicant to file such additional information as may be

required to determine its eligibility for an award.

(g)(1) Unless otherwise directed by the administrative law judge, the net worth exhibit will be included in the public record of the fee application proceeding. An applicant that objects to public disclosure of information in any portion of the exhibit may submit that portion of the exhibit in a sealed envelope labeled "Confidential Financial Information", accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why public disclosure of the information would adversely affect the applicant and why disclosure is not required in the public interest. The exhibit shall be served on the General Counsel but need not be served on any other party to the proceeding. If the administrative law judge finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding.

(2) If the administrative law judge grants the motion to withhold from public disclosure, the exhibit shall remain sealed, except to the extent that its contents are required to be disclosed at a hearing. The granting of the motion to withhold from public disclosure shall not be determinative of the availability of the document under the Freedom of Information Act in response to a request made under the provisions of § 102.117. Notwithstanding that the exhibit may be withheld from public disclosure, the General Counsel may disclose information from the exhibit to others if required in the course of an investigation to verify the claim of eligibility.

(h) The application shall be accompanied by full documentation of the fees and expenses for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the dates and the hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The administrative law judge may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

[46 FR 48087, Sept. 30, 1981, as amended at 51 FR 17733, May 15, 1986]

§ 102.148 When an application may be filed; place of filing; service; referral to administrative law judge; stay of proceeding.

(a) An application may be filed after entry of the final order establishing that the applicant has prevailed in an adversary adjudication proceeding or in a significant and discrete substantive portion of that proceeding, but in no case later than 30 days after the entry of the Board's final order in that proceeding. The application for an award shall be filed in triplicate with the Board in Washington, D.C., together with a certificate of service. The application shall be served on the regional director and all parties to the adversary adjudication in the same manner as other pleadings in that proceeding, except as provided in § 102.147(g)(1) for financial information alleged to be confidential.

(b) Upon filing, the application shall be referred by the Board to the administrative law judge who heard the adversary adjudication upon which the application is based, or, in the event that proceeding had not previously been heard by an administrative law judge, it shall be referred to the chief administrative law judge for designation of an administrative law judge, in accordance with § 102.34, to consider the application. When the administrative law judge to whom the application has been referred is or becomes unavailable the provisions of §§ 102.34 and 102.36 shall be applicable.

(c) Proceedings for the award of fees, but not the time limit of this section for filing an application for an award, shall be stayed pending final disposition of the adversary adjudication in the event any person seeks reconsideration or review of the decision in that proceeding.

(d) For purposes of this section the withdrawal of a complaint by a regional director under § 102.18 of these rules shall be treated as a final order, and an appeal under § 102.19 of these rules shall be treated as a request for reconsideration of that final order.

§ 102.149 Filing of documents; service of documents; motions for extension of time.

(a) All motions and pleadings after the time the case is referred by the Board to the administrative law judge until the issuance of the judge's decision shall be filed with the administrative law judge in triplicate together with proof of service. Copies of all documents filed shall be served on all parties to the adversary adjudication.

(b) Motions for extensions of time to file motions, documents or pleading permitted by § 102.150 or § 102.152 shall be filed with the chief administrative law judge in Washington, D.C., the deputy chief administrative law judge in San Francisco, California, or the associate chief administrative law judge in New York, New York, or Atlanta, Georgia, as the case may be, not later than three days before the due date of the document. Notice of the request shall be immediately served on all other parties and proof of service furnished.

§ 102.150 Answer to application; reply to answer; comments by other parties.

(a) Within 35 days after service of an application the general counsel may file an answer to the application. Unless the general counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file a timely answer may be treated as a consent to the award requested. The filing of a motion to dismiss the application shall stay the time for filing an answer to a date 35 days after issuance of any order denying the motion. Within 21 days after service of any motion to dismiss, the applicant shall file a response thereto. Review of an order granting a motion to dismiss an application in its entirety may be obtained by filing a request therefor with the Board in Washington, DC, pursuant to § 102.27 of these rules.

(b) If the General Counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate toward a settlement. The filing of such a statement shall extend the time for filing an answer for an additional 30 days.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of the General Counsel's position. If the answer is based on alleged facts not already in the record of the adversary adjudication supporting affidavits shall be provided or a request made for further proceedings under § 102.152.

(d) Within 21 days after service of an answer, the applicant may file a reply. If the reply is based on alleged facts not already in the record of the adversary adjudication, supporting affidavits shall be provided or a request made for further proceedings under § 102.152.

(e) Any party to an adversary adjudication other than the applicant and the general counsel may file comments on a fee application within 35 days after it is served and on an answer within 21 days after it is served. A commenting party may not participate further in the fee application proceeding unless the administrative law judge determines that such participation is required in order to permit full exploration of matters raised in the comments.

[46 FR 48087, Sept. 30, 1981, as amended at 51 FR 23750, July 1, 1986]

EFFECTIVE DATE NOTE: 29 CFR 102.150(a), (d), and (e) were revised at 51 FR 23750, July 1, 1986. This revision becomes effective on September 29, 1986. For the convenience of the user, the superseded text reads as follows:

§ 102.150 Answer to application; reply to answer; comments by other parties.

(a) Within 30 days after service of an application the General Counsel may file an answer to the application. Unless the General Counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file a timely answer may be treated as a consent to the award requested. The filing of a motion to dismiss the application

shall stay the time for filing an answer to a date 30 days after issuance of any order denying the motion. Within 15 days after service of any motion to dismiss, the applicant shall file a response thereto. Review of an order granting a motion to dismiss an application in its entirety may be obtained by filing a request therefore with the Board in Washington, D.C., pursuant to § 102.27 of these rules.

* * * * *

(d) Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on alleged facts not already in the record of the adversary adjudication supporting affidavits shall be provided or a request made for further proceedings under § 102.152.

(e) Any party to an adversary adjudication other than the applicant and the General Counsel may file comments on a fee application within 30 days after it is served and on an answer within 15 days after it is served. A commenting party may not participate further in the fee application proceeding unless the administative law judge determines that such participation is required in order to permit full exploration of matters raised in the comments.

§ 102.151 Settlement.

The applicant and the General Counsel may agree on a proposed settlement of the award before final action on the application. If a prevailing party and the General Counsel agree on a proposed settlement of an award before an application has been filed, the proposed settlement shall be filed with the application. All such settlements shall be subject to approval by the Board.

§ 102.152 Further proceedings.

(a) Ordinarily the determination of an award will be made on the basis of the documents in the record. The administrative law judge, however, upon request of either the applicant or the General Counsel, or on his or her own initiative, may order further proceedings, including an informal conference, oral argument, additional written submissions or an evidentiary hearing. An evidentiary hearing shall be held only when necessary for resolution of material issues of fact.

(b) A request that the administrative law judge order further proceedings under this section shall specifically identify the disputed issues and the evidence sought to be adduced, and shall explain why the additional proceedings are necessary to resolve the issues.

(c) An order of the administrative law judge scheduling further proceedings shall specify the issues to be considered.

(d) Any evidentiary hearing held pursuant to this section shall be open to the public and shall be conducted in accordance with §§ 102.30 to 102.44 of these rules, except §§ 102.33, 102.34 and 102.38.

(e) Rulings of the administrative law judge shall be reviewable by the Board only in accordance with the provisions of § 102.26.

§ 102.153 Administrative law judge's decision; contents; service; transfer of case to the Board; contents of record in case.

(a) Upon conclusion of proceedings under §§ 102.147 to 102.152, the administrative law judge shall prepare a decision. The decision shall include written findings and conclusions as necessary to dispose of the application. The administrative law judge shall file the original of his decision with the Board and cause a copy thereof to be served on each of the parties. Upon the filing of the decision, the Board shall enter an order transferring the case to the Board and shall serve copies of the order, setting forth the date of such transfer, on all the parties. Service of the administrative law judge's decision and of the order transferring the case to the Board shall be complete upon mailing.

(b) The record in a proceeding on an application for an award of fees and expenses shall include the application and any amendments or attachments thereto, the net worth exhibit, the answer and any amendments or attachments thereto, any reply to the answer, any comments by other parties, motions, rulings, orders, stipulations, written submissions, the stenographic transcript of any oral argument, the stenographic transcript of any hearing, exhibits and depositions together with the administrative law judge's decision and exceptions, any

cross-exceptions or answering briefs as provided in § 102.46, and the record of the adversary adjudication upon which the application is based.

§ 102.154 Exceptions to administrative law judge's decision; briefs; action of Board.

Procedures before the Board, including the filing of exceptions to the administrative law judge's decision and briefs, and action by the Board, shall be in accordance with §§ 102.46, 102.47, 102.48 and 102.50 of these rules. The Board will issue a decision on the application or remand the proceeding to the administrative law judge for further proceedings.

§ 102.155 Payment of award.

To obtain payment of an award made by the Board the applicant shall submit to the Director, Division of Administration, a copy of the Board's final decision granting the award, accompanied by a statement that the applicant will not seek court review of the decision. If such statement is filed the Agency will pay the amount of the award within 60 days, unless judicial review of the award or of the underlying decision has been sought.

PART 103—OTHER RULES

Subpart A—Jurisdictional Standards

Sec.

103.1 Colleges and universities.
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103.100 Offers of reinstatement to employees in Armed Forces.

AUTHORITY: 49 Stat. 449; 29 U.S.C. 151–166, as amended by Act of June 23, 1947 (61 Stat. 136; 29 U.S.C. Supp. 151–167), Act of October 22, 1951 (65 Stat. 601; 29 U.S.C. 158, 159, 168), and Act of September 14, 1959 (73 Stat. 519; 29 U.S.C. 141–168).

Subpart A—Jurisdictional Standards

§ 103.1 Colleges and universities.

The Board will assert its jurisdiction in any proceeding arising under sections 8, 9, and 10 of the Act involving any private nonprofit college or university which has a gross annual revenue from all sources (excluding only contributions which, because of limitation by the grantor, are not available for use for operating expenses) of not less than $1 million.

[35 FR 18370, Dec. 3, 1970]

§ 103.2 Symphony orchestras.

The Board will assert its jurisdiction in any proceeding arising under sections 8, 9, and 10 of the Act involving any symphony orchestra which has a gross annual revenue from all sources (excluding only contributions which are because of limitation by the grantor not available for use for operating expenses) of not less than $1 million.

[38 FR 6177, Mar. 7, 1973]

§ 103.3 Horseracing and dogracing industries.

The Board will not assert its jurisdiction in any proceeding under sections 8, 9, and 10 of the Act involving the horseracing and dogracing industries.

[38 FR 9507, Apr. 17, 1973]

Subparts B–E—[Reserved]

Subpart F—Remedial Orders

§ 103.100 Offers of reinstatement to employees in Armed Forces.

When an employer is required by a Board remedial order to offer an employee employment, reemployment, or reinstatement, or to notify an employee of his or her entitlement to reinstatement upon application, the employer shall, if the employee is serving in the Armed Forces of the United States at the time such offer or notification is made, also notify the employee of his or her right to reinstatement upon application in accordance with the Military Selective Service Act of 1967, as amended, after discharge from the Armed Forces.

[37 FR 21939, Oct. 17, 1972, as amended at 38 FR 9506, Apr. 17, 1973]

CHAPTER II—BUREAU OF LABOR-MANAGEMENT RELATIONS AND COOPERATIVE PROGRAMS, DEPARTMENT OF LABOR

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PART 215—GUIDELINES, SECTION 13(c), URBAN MASS TRANSPORTATION ACT OF 1964, AS AMENDED

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215.7 Department of Labor contact.

AUTHORITY: Secretary's Order No. 11-72, May 12, 1972.

SOURCE: 43 FR 13558, Mar. 31, 1978, unless otherwise noted.

§ 215.1 Purpose.

(a) The purpose of these guidelines is to provide information concerning the Department of Labor's administrative procedures in processing applications for assistance under the Urban Mass Transportation Act of 1964, as amended (hereinafter "the Act").

(b) Section 13(c) of the Act reads as follows:

It shall be a condition of any assistance under section 3 of this Act that fair and equitable arrangements are made, as determined by the Secretary of Labor, to protect the interests of employees affected by such assistance. Such protective arrangements shall include, without being limited to, such provisions as may be necessary for (1) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise; (2) the continuation of collective bargaining rights; (3) the protection of individual employees against a worsening of their positions with respect to their employment; (4) assurances of employment to employees of acquired mass transportation systems and priority of reemployment of employees terminated or laid off; and (5) paid training or retraining programs. Such arrangements shall include provisions protecting individual employees against a worsening of their positions with respect to their employment which shall in no vent provide benefits less than those established pursuant to section 5(2)(f) of the Act of February 4, 1887 (24 Stat. 379), as amended. The contract for the granting of any such assistance shall specify the terms and conditions of the protective arrangements.

§ 215.2 General.

Upon receipt of copies of applications for Federal assistance subject to section 13(c), together with a request for the certification of employee protective arrangements from the Department of Transportation, the Department of Labor will process those applications, which may be in either preliminary or final form. To facilitate review, the section of the application dealing with labor and relocation should estimate the effects on mass transportation employees of urban mass transportation carriers of the contemplated Federal assistance including possible impact of the assistance upon existing collective bargaining agreements, employment rights, privileges and benefits (including pensions) and the continuation of collective bargaining rights. The application should identify the labor organization, if any, representing employees of urban mass transit carriers in the area of the proposed project and describe what steps, if any, have been taken to develop the required employee protections.

§ 215.3 Employees represented by a labor organization.

(a)(1) If affected employees are represented by a labor organization it is expected that protective arrangements shall be the product of negotiation, pursuant to these guidelines.

(2) In instances where states or political subdivisions are subject to legal restrictions on bargaining with employee organizations, the Department of Labor will utilize special procedures to satisfy the Federal statute in a manner which does not contravene state or local law. For example, employee protective terms and conditions, acceptable to both employee and applicant representatives, may be incorporated into a resolution adopted by the involved local government.

(b) Upon receipt of an application involving affected employees represented by a labor organization, the Department of Labor will refer a copy of the application to that organization and notify the applicant of referral.

(c) Following referral and notification under paragraph (b) of this sec-

tion, and subject to the exceptions defined in §§ 215.5 and 215.6, parties will be expected to engage in good faith efforts to reach mutually acceptable protective arrangements through negotiation.

(d) As part of the Department of Labor's review of an application, a time schedule for case processing will be established by the Department of Labor where appropriate. Absent special circumstances, the time schedule will be established in cases where funding approval is anticipated and will, to the extent possible, conform to the Department of Transportation's projected time frame for funding. In situations where no action on a project by a specific time is predictable by the Department of Transportation, it is expected that no time schedule will be set by the Department of Labor. Any time schedule established by the Department of Labor will be specified in its referral letters under § 215.3(b) or subsequent written communications to the parties. The parties are thereby placed on notice of the Department's target date for the certification of the project. It is expected that negotiations will be pursued expeditiously and in good faith. The Secretary will monitor progress of negotiations and in cases where negotiations break down or irreconcilable issues are present, the Department will incorporate into the time schedule dates by which the Secretary will take alternative action.

(e) The Secretary of Labor will review negotiated protective arrangements. If an arrangement meets the requirements of section 13(c), the Secretary will so certify to the Urban Mass Transportation Administrator. If the arrangement is not in conformity with the provisions of section 13(c), the Secretary may grant parties additional time to negotiate a satisfactory agreement, or he may set forth the provisions of the protective arrangement himself.

(f) If during the processing of an application the Secretary finds that the parties are unable to reach agreement, he will review the positions of the parties to determine appropriate action. Such action may include the Secretary's determination of the terms and conditions upon which he will base his certification or his refusal to certify for specified reasons.

§ 215.4 Employees not represented by a labor organization.

(a) The certification made by the Secretary will afford the same level of protection to those employees who are not represented by labor organizations.

(b) If there is no labor organization representing employees, the Secretary will set forth the protective terms and conditions in his letter of certification.

§ 215.5 Processing of amendatory applications.

When an application is supplemental to or revises or amends in immaterial respects an application for which the Department of Labor has already certified that fair and equitable arrangements have been made to protect the interests of mass transit employees affected by the subject project, and absent unusual circumstances, the Department of Labor will on its own initiative apply to the supplemental or other amendatory application the same terms and conditions as were certified for the subject project as originally constituted. The Department of Labor's processing of these applications will be expedited.

§ 215.6 Recurring Operating Grants and the Model Agreement.

(a) In instances where the Department of Labor receives general purposes operating assistance grant applications and the parties have previously endorsed the Model 13(c) agreement (referred to also as the "National Agreement"), the Department will serve notice to the subject parties that it will certify the project on the basis of the Model Agreement unless informed within two weeks from the issuance of our letter of notice that special circumstances are presented by the project which require changes in the Model Agreement or supplemental arrangements as applied to the particular project involved. In the event the Secretary determines that changes in the Model Agreement or supplemental arrangements are required, the Secretary will direct the parties to ne-

gotiate such arrangements in accordance with the case processing procedure described in § 215.3 hereof. If the Secretary determines that no special circumstances exist, he will so advise the parties and certify the project on the basis of the Model Agreement.

(b) The Model (or National) Agreement mentioned in paragraph (a) of this section refers to the agreement executed on July 23, 1975, by representatives of the American Public Transit Association and the Amalgamated Transit Union and Transport Workers Union of America and on July 31, 1975, by representatives of the Railway Labor Executives' Association, Brotherhood of Locomotive Engineers, Brotherhood of Railway and Airline Clerks and International Association of Machinists and Aerospace Workers. The agreement is intended to serve as a ready-made employee protective arrangement for adoption by local parties in specific operating assistance project situations. The Secretary has determined that this agreement provides fair and equitable arrangements to protect the interests of employees in general purpose operating assistance project situations and meets the requirements of section 13(c).

§ 215.7 Department of Labor contact.

Questions concerning the subject matter covered by these guidelines should be addressed to the Division of Employee Protections, Labor-Management Services Administration, U.S. Department of Labor, Room N-5641, 200 Constitution Avenue NW., Washington, D.C. 20210; phone number 202-523-6495. (Secretary's Order No. 11-72, May 12, 1972.)

PART 220—AIRLINE EMPLOYEE PROTECTION PROGRAM

Subpart A—Purpose and Scope of the Airline Employee Protection Program

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220.50 Effective period of the program.
220.51 Disclosure of information.

APPENDIX I—U.S. CARRIERS CERTIFICATED AS OF OCTOBER 23, 1978 UNDER SECTION 401 OF THE FEDERAL AVIATION ACT OF 1958, AS AMENDED.

AUTHORITY: Section 43(f) of the Airline Deregulation Act of 1978, Pub. L. No. 95-504, 92 Stat. 1750-1753 (49 U.S.C. 1552) (Secretary's Order No. 1-79, 44 FR 13093; Secretary's Order No. 3-84, 49 FR 29578).

SOURCE: 50 FR 53101, Dec. 27, 1985, unless otherwise noted.

Subpart A—Purpose and Scope of the Airline Employee Protection Program

§ 220.01 Definitions.

As used in this Part, unless the content otherwise indicates:

(a) "Act" means the Airline Deregulation Act of 1978, Public Law 95-504, 92 Stat. 1705.

(b) "Air Carrier" means an air carrier certificated under Section 401 of

the Federal Aviation Act of 1958 (49 U.S.C. 1371).

(c) "Center" means the entity or location which from time to time may be designated by the Secretary to receive, maintain and distribute the job listing information required by this Part.

(d) "Corporate officer" means an individual who holds any officer's position established pursuant to the Articles of Incorporation or bylaws of any air carrier, or who is otherwise identified as an officer by any air carrier, in filings with the Federal Aviation Administration, Civil Aeronautics Board or Securities and Exchange Commission or in any reports to stockholders or any public communications of an air carrier.

(e) "Covered air carrier" means an air carrier which was certificated prior to October 24, 1978 (A listing of such carriers appears as an appendix to this part).

(f) "Designated employee" means a protected employee who meets the eligibility requirements set forth in § 220.10.

(g) "Effective period" means the period commencing on the effective date of these regulations and ending on the later of: (1) October 23, 1988, or (2) the last day of the final month in which the Secretary is required to make a payment under Section 43 of the Act; except that nothing in these regulations shall preclude the exercise of statutory rights and duties between October 24, 1978, and the effective date of these regulations.

(h) "Eligibility period" means the ten-year period beginning on October 24, 1978.

(i) "Employment relationship" means an attachment to a covered air carrier which includes, but is not limited to, compensated service, furlough, leave, or strike.

(j) "Equal employment opportunity requirement" means a specific equal employment requirement, pursuant to a federal court or administrative order, consent decree, or conciliation agreement, requiring that named individuals or specific members of a class are entitled to relief by virtue of the carrier's unlawful employment discrimination.

(k) "Occupational specialty" means the class, craft, or field of endeavor in which an individual was employed at the time of separation from a covered air carrier or in which the employee was employed during the 12 months immediately preceding the date of separation.

(l) "Protected employee" means a person other than a member of the Board of Directors or corporate officer of a covered air carrier:

(1) Who had an employment relationship with a covered air carrier on October 24, 1978, and

(2) Who on October 24, 1978, had four years of employment or four years accrued seniority with a single covered air carrier. The term employee shall include any full or part-time employee other than an employee in seasonal or temporary employment as defined herein. As used herein four years of employment shall mean not less than 48 months (whether or not consecutive) in which the employee actually completed the minimum number of hours of regular employment required for such employee's craft, class or position under the then applicable requirements of the employing carrier.

(m) "Seasonal employment" means employment during limited periods of the year due to peak market conditions or other factors which are periodic in nature, and in positions which do not confer seniority or recall rights.

(n) "Secretary" means the Secretary of Labor of the United States.

(o) "Temporary employment" means employment of limited duration which does not confer seniority or recall rights.

(p) "Terminated," means, unless expressly provided to the contrary, termination of employment, other than for cause.

(q) "Terminated for cause" means the separation of an individual from employment initiated by an air carrier for violation of such carrier's rules, policies, procedures, or practices pertaining to employee standards of conduct, job performance, or dependability.

(r) "Vacancy" means an employment opportunity other than seasonal or temporary employment, which an air

carrier seeks to fill from outside its existing or furloughed work force.

§ 220.02 Purpose.

Section 43(d) of the Act provides a first-right-of-hire for designated employees of covered air carriers. The regulations in this Part are issued to effectuate section 43(d) (1) and (2) of the Act (hereinafter referred to as the Rehire Program).

§ 220.03 Scope.

(a) The Rehire Program is applicable only to designated employees, as more fully set forth herein, and only those employees who are expressly granted a hiring preference under the Act and these regulations have any rights under the Rehire Program. The Secretary of Labor will also publish a comprehensive list of jobs available with air carriers.

§ 220.04 Responsibilities of the Secretary of Labor.

The Secretary of Labor is responsible for administering the Rehire Program, and the Deputy Under Secretary for Labor-Management Relations and Cooperative Programs, Bureau of Labor-Management Relations and Cooperative Programs (BLMRCP) has been delegated responsibility for the following:

(a) The development and promulgation of policies, regulations and procedures covering the first-right-of-hire provisions of Section 43(d)(1) of the Act;

(b) The development and promulgation of policies, regulations, and procedures covering the comprehensive job list required under Section 43(d)(2) of the Act; and

(c) The establishment and implementation of reporting requirements for air carriers to obtain pertinent information necessary for fulfilling the Secretary's responsibilities under Section 43(d)(2) of the Act.

Subpart B—Designated Employees' Eligibility and Rights

§ 220.10 Eligibility requirements.

(a) To qualify as a designated employee eligible for rights under this Part 220, an applicant must be a protected employee who is involuntarily placed on furlough or is terminated by a covered air carrier during the eligibility period.

(b) A protected employee shall not be deemed to be furloughed or terminated if such employee:

(1) Retired voluntarily;

(2) Was required to retire by virtue of reaching the mandatory retirement age, if any, established by a covered air carrier or as prescribed by any government agency with regulatory authority over a covered air carrier;

(3) Retired due to a disability;

(4) Is on strike or is withholding services in support of other employees who have struck the covered air carrier;

(5) Is terminated for cause as defined in § 220.01;

(6) Res'gned or voluntarily quit for any reason.

(c) A designated employee who is recalled by his former carrier is no longer eligible under this section to exercise the first-right-of-hire. Such a person may become a designated employee in the future due to a subsequent termination or furlough which occurs on or prior to the expiration of the eligibility period.

§ 220.11 Designated employees' rights.

(a) A designated employee shall have a first-right-of-hire in such employee's occupational specialty, regardless of age, with any covered air carrier hiring additional employees; *Provided, however,* That each designated employee must satisfy all qualifications or other requirements established by the hiring carrier (subject to the limitations contained in Section 220.21) and must make a timely application in accordance with normal carrier procedures for any particular job vacancy.

(b) A designated employee hired by any covered air carrier pursuant to the provisions of the Act shall not be required, as a condition of employment, or in any other manner, to relinquish, waive, or forfeit any seniority or recall rights which such person may possess with any other air carrier; *Provided, however,* That the provisions of this

part shall not be deemed to create or prolong any such seniority or recall rights.

Subpart C—Carriers' Responsibilities

§ 220.20 Duty to hire.

(a) Subject to § 220.24, a covered air carrier shall have the duty to hire a designated employee, regardless of age, who otherwise meets the qualification requirements established by such carrier before it hires any other applicant when such carrier is seeking to fill a vacancy in the designated employee's occupational specialty from outside its work force. As used herein "work force" shall include all present employees and any furloughed or terminated employees who, at the time of furlough or termination, possessed recall or seniority rights.

(b) Subject to the provisions of § 220.24, a covered air carrier shall not fill a vacancy, which would otherwise be available to a designated employee, by promoting or reassigning a seasonal or temporary employee, *unless* such seasonal or temporary employee is a designated employee.

(c) When considering applications from more than one designated employee for a particular vacancy, a covered air carrier shall be entitled to offer employment to any such designated employee in its absolute discretion.

§ 220.21 Criteria for employment.

(a) A covered air carrier shall be entitled to apply any prerequisites or qualifications determined by it for any vacancy, except that, solely with respect to the duty to hire created by the Act, a covered air carrier shall not be entitled to limit employment opportunities for designated employees on the basis of:

(1) Initial hiring age (provided that such prohibition shall not be applicable to retirement ages applicable to all of any class or craft of such air carrier's employees); or

(2) The existence of any seniority, recall rights or previous experience with any other air carrier; *Provided, however,* That covered air carriers shall be entitled to require prospective employees to disclose the existence of any such seniority or recall rights in making application for employment and to take the existence or nonexistence of such rights into account in selecting from among those qualified designated employees who have applied for a particular job vacancy.

(b) In filling job vacancies during the effective period, covered air carriers shall be entitled to require applicants to furnish evidence that they are designated employees.

§ 220.22 Listing a vacancy.

(a) During the effective period all air carriers shall be required to list each vacancy with the Center at the earliest practicable time, and to include with such listing a statement as to whether the carrier is subject to an equal employment opportunity requirement, as defined in these regulations, in filling the vacancy. In addition, any air carrier shall be entitled to list anticipated vacancies with the Center at any time.

§ 220.23 Content of vacancy listing.

Air carriers shall provide the Center with a description for each job listing, which shall include, but need not be limited to, the following—

(a) Job title;

(b) Type of position (full or part-time);

(c) Salary;

(d) Basic qualifications and/or training requirements;

(e) Brief description of duties;

(f) Location of vacancy (if known);

(g) Special requirements such as type rating, licensing, skill requirements, etc.;

(h) Whether the vacancy is subject to the duty to hire;

(i) Information on how to apply, such as contact peson, mailing address, and any special application procedures; and

(j) Whether the carrier is subject to an equal employment opportunity requirement, as defined in these regulations, in filling the vacancy.

(Approved by the Office of Management and Budget under OMB Control Number 1214-0002.)

§ 220.24 Filling a vacancy.

(a) A covered air carrier may fill a vacancy with a designated employee at any time after a vacancy has been listed with the Center.

(b) A covered air carrier may fill a vacancy with someone who is not a designated employee after the vacancy has been listed with the Center for at least 30 days; if

(1) No designated employee with the requisite occupational specialty has applied for the vacancy in accordance with § 220.30 within that time;

(2) No designated employee who did apply within that time period meets the carriers' criteria for employment as set forth in § 220.21; or

(3) The vacancy is subject to an equal employment opportunity requirement and the carrier cannot satisfy such equal employment opportunity requirement by hiring a designated employee.

(c) A covered air carrier may fill a vacancy on a temporary basis with someone who is not a designated employee while the carrier is considering applications for the vacancy which were received from designated employees during the listing period.

(d) The date of the listing shall be the date on which the listing is received by the Center.

§ 220.25 List of protected employees.

(a) Within 60 calendar days of the effective date of these regulations, each covered air carrier shall provide the Secretary with a list of all protected employees who were employed by it on October 24, 1978.

(b) The list shall contain the following information:

(1) Protected employee's name;

(2) Social Security number (if available); and

(3) Current occupational specialty for present employees or occupational specialty at the time of separation from employment for former employees.

(c)(1) Not later than 90 calendar days after the effective date of these regulations, each covered air carrier shall provide a onetime notice to each employee with an employment relationship with the carrier on October 24, 1978, stating whether or not the carrier has determined that employee to be a protected employee within the meaning of these regulations, and if so that the carrier has reported his or her name to the Secretary. Employees who are determined to be not protected shall be advised of their rights to appeal.

(2) Employees who dispute the carrier's determination of protected status may submit evidence of their status to the covered air carrier within 60 calendar days of receiving the notice required by paragraph (c)(1).

(3) The covered air carrier shall consider the evidence submitted by the employee and shall inform the employee of its final determination within 15 calendar days of the submission of evidence. In the event the carrier determines that the employee qualifies as a protected employee, it shall forward the information required by paragraph (b) of this section to the Secretary.

(The requirements contained in § 220.25(a) were approved by the Office of Management and Budget under OMB Control Number 1214-0002.)

§ 220.26 Appeals to the Secretary.

(a) If the employee disagrees with the carrier's final determination under § 220.25 that he or she is not a protected employee within the meaning of this part, the employee (or his or her designated representative with express authorization) may appeal such determination to the Secretary within 60 calendar days of the carrier's final decision under § 220.25(c)(3) or the date when such decision was required.

(b) An appeal must be written, dated, and signed by the employee. It must set forth:

(1) The full name, address, and telephone number of the employee;

(2) The full name and address of the carrier making the determination; the full name of the individual(s) who made the determination for the carrier and the date of that determination;

(3) A summary of the pertinent events and circumstances concerning the employee's status and the basis of the disagreement, including the original date of hire, date of all periods of

furlough, leave or termination, and copies of relevant documents; and

(4) Such other information as may be required by the Secretary.

(c) Any appeal hereunder may be filed with the Airline Employee Protection Program, Bureau of Labor-Management Relations and Cooperative Programs, Room N-5416, 200 Constitution Avenue, NW., Washington, DC 20210.

(d)(1) Upon receipt of an appeal, the Secretary will request information from the parties or conduct such other investigation as may be required.

(2) Upon review of the entire record, the Secretary shall determine either that—

(i) The employee qualifies for protected status, and the Secretary shall add the employee's name to the list of protected employees and so notify the parties; or

(ii) The employee does not qualify for protected status and so notify the parties.

§ 220.27 Notice of rights.

(a) Not later than the date of separation from employment, a covered air carrier which furloughs or terminates a protected employee during the eligibility period, unless such furlough is limited to a specific period of less than 90 calendar days, shall furnish such protected employee with a notice of rights in the form of a letter or other written documentation that such employee is a designated employee and thereby is entitled to exercise a first-right-of-hire. Such notice of rights shall include, but not be limited to, the following information:

(1) Name;

(2) Social Security number (if available);

(3) Occupational specialty;

(4) Date of furlough or termination;

(5) An official of the covered air carrier who can verify the individual's status as a designated employee; and

(6) Signature, name, and location of the certifying official.

(b) As soon as practicable, but not later than 60 calendar days following the effective date of these regulations, each covered air carrier shall make a reasonable effort to provide the notice or rights required in paragraph (a) of this section to any designated employee who was furloughed or terminated by such carrier on or after October 24, 1978, and prior to the effective date of these regulations and who has not been recalled to employment by such covered air carrier.

(c) A covered air carrier shall provide a verified true copy of the notice of rights to a designated employee who has lost his or her original copy.

(Approved by the Office of Management and Budget under OMB Control Number 1214-0002.)

§ 220.28 Air carrier actions to be reported to the Secretary.

(a) A covered air carrier shall report to the Secretary:

(1) The names and Social Security numbers (if available) of all designated employees hired by it, and

(2) The filling of any vacancy with other than a designated employee.

With respect to any occurrences reported under paragraph (a)(2) of this section, the report of the covered air carrier shall contain the job order number assigned to that vacancy by the Center, the date of hire, and a certification by a corporate officer that the carrier complied with the provisions of this part and that no qualified designated employee with the requisite occupational specialty applied in a timely manner.

(b) Two copies of the reports required by this section shall be filed with the Secretary covering the six-month periods ending June 30 and December 31 of each calendar year in which these regulations are in effect and shall be submitted within 60 calendar days of the end of the reporting period.

(Approved by the Office of Management and Budget under OMB Control Number 1214-0002.)

§ 220.29 Equal employment opportunity.

(a) Where a covered air carrier is under an equal employment opportunity requirement, the covered air carrier shall, to the extent possible, satisfy this equal employment obligation by hiring qualified designated employees.

(b) Where a covered air carrier is under an equal employment opportunity requirement and cannot satisfy such requirement by hiring from the pool of qualified designated employees, the carrier may meet its equal employment requirement by hiring non-designated employees. *Provided, however,* That this provision shall not change or reduce the responsibilities of carriers in regard to the hiring procedures required by §§ 220.21, 220.22, 220.23, and 220.24.

Subpart D—Designated Employees' Responsibilities

§ 220.30 Designated employees' responsibilities.

It is the responsibility of each designated employee to:

(a) Make application to any covered air carrier for whom the designated employee desires to work in the time and manner required by such carrier.

(b) To insure that an application previously submitted to a covered air carrier which currently lists a vacancy is in an active status so as to be considered for such vacancy;

(c) To provide a copy, if requested, of the notice of rights to a potential employing air carrier; and

(d) To retain the original notice of rights for future use.

Subpart E—Department of Labor's Responsibilities

§ 220.40 Comprehensive job list.

(a) The Secretary shall establish a Center to maintain a comprehensive listing of all vacancies listed by air carriers in accordance with §§ 220.22 and 220.23.

(b) The Center will be accessible by telephone throughout the United States to facilitate the listing or modifying of vacancy information by air carriers.

(c) The Center shall provide an air carrier with an identifying number for each vacancy listed on the comprehensive listing.

(d) The comprehensive listing shall be compiled, published and distributed to each local office of the State Employment Security Agencies on a periodic basis as determined necessary by the Secretary, and it shall be distributed to such other individuals or organizations as may desire to receive copies thereof in accordance with criteria established by the Secretary from time to time.

§ 220.41 List of protected employees.

The Secretary shall establish and publish a list of protected employees as reported by covered air carriers under § 220.25. A copy of this list shall be sent to all covered air carriers as soon as available.

Subpart F—Administration

§ 220.50 Effective period of the program.

(a) *Beginning date.* (1) The requirements set forth in this part shall be effective thirty (30) days after publication in the FEDERAL REGISTER.

(b) *Ending date.* This program and these regulations terminate on the last day of the effective period.

(c) Nothing in this Part shall affect the rights and duties of protected employees and covered air carriers under the Act prior to the effectie date of this part.

§ 220.51 Disclosure of information.

The Department of Labor shall make available to covered air carriers and to designated employees or their authorized representatives, all reports, certifications, or lists collected under this Part, to the extent permitted by the Privacy Act (5 U.S.C. 552a) and the Department's regulations issued pursuant to that Act (29 CFR Part 70a).

APPENDIX I—U.S. CARRIERS CERTIFICATED AS OF OCTOBER 23, 1978, UNDER SECTION 401 OF THE FEDERAL AVIATION ACT OF 1958, AS AMENDED

(Annotations Reflect Operating Status as of December 2, 1985.)

1. Airlift International, Inc.
2. Air Micronesia, Inc.
3. Air Midwest
4. Air New England, Inc.*
5. Air Wisconsin, Inc.
6. Alaska Airlines, Inc.
7. Allegheny Airlines, Inc. (*2*)
8. Aloha Airlines, Inc.

9. American Airlines, Inc.
10. Aspen Airways, Inc.
11. Braniff Airways, Inc. (*1*)
12. Capitol International Airways, Inc.*
13. Chicago Helicopter Airways, Inc.*
14. Colonial Airlines, Inc.*
15. Continental Air Lines, Inc.
16. Delta Air Lines, Inc.
17. Eastern Airlines, Inc.
18. Evergreen International Airlines, Inc.
19. The Flying Tiger Line, Inc.
20. Frontier Airlines, Inc.
21. Hawaiian Airlines, Inc.
22. Hughes Air Corp.* (*4*)
23. Kodiak Western Alaska Airlines, Inc.*
24. Mackey International Airlines, Inc.*
25. McCulloch International Airlines, Inc.
26. Midway Airlines, Inc.
27. Midway (Southwest) Airways, Co.*
28. Modern Airways, Inc. (*1*)
29. Munz Northern Airlines, Inc.*
30. National Airlines, Inc.* (*5*)
31. New York Airways, Inc.*
32. North Central Airlines, Inc.* (*4*)
33. Northwest Airlines, Inc.
34. Overseas National Airways, Inc.* (*6*)
35. Ozark Air Lines, Inc.
36. Pan American World Airways, Inc.
37. Piedmont Aviation, Inc.
38. Reeve Aleutian Airways, Inc.
39. Rich International Airlines, Inc. (*1*)
40. Seaboard World Airways, Inc.* (*7*)
41. Southern Air Transport, Inc.
42. Southern Airways, Inc.* (*4*)
43. Texas International Airlines, Inc. (*8*)
44. Trans International Airlines, Inc. (*9*)
45. Trans World Airlines, Inc.
46. United Airlines, Inc.
47. Western Air Lines, Inc.
48. Wien Air Alaska, Inc.
49. World Airways, Inc.
50. Wright Air Lines, Inc.
51. Zantop International Airlines, Inc.

* No longer holds certificate.

(*1*) Holds certificate, but not operating.

(*2*) Renamed U.S. Air, Inc.

(*3*) Renamed Capitol Air, Inc.

(*4*) Merged into Republic Airlines, Inc.

(*5*) Merged into Pan American World Airways, Inc.

(*6*) Ceased operation in September 1978. United Air Carriers, Inc., dba National Airlines and dba Overseas National Airways, may be a successor.

(*7*) Merged into Flying Tiger Line, Inc.

(*8*) Merged into Continental Airlines.

(*9*) Renamed Transamerica Airlines, Inc.

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PART 301—RULES OF PROCEDURE

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301.3 Organization.
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301.6 General.
301.7 Hearings.
301.8 Appearances.
301.9 Awards.

AUTHORITY: Sec. 3, 44 Stat. 578, as amended; 45 U.S.C. 153.

SOURCE: Circular 1, Oct. 10, 1934, unless otherwise noted.

§ 301.1 General duties.

(a) It shall be the duty of all carriers, their officers, agents and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any disputes between the carrier and the employees thereof.

(b) All disputes between a carrier or carriers, and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

§ 301.2 Classes of disputes.

(a) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this act (June 21, 1934, 48 Stat. 1185; 45 U.S.C. 151–162), shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

(b) No petition shall be considered by any division of the Board unless the subject matter has been handled in accordance with the provisions of the Railway Labor Act, approved June 21, 1934.

§ 301.3 Organization.

The National Railroad Adjustment Board was organized as of July 31, 1934, in accordance with the provisions of the Railway Labor Act, approved June 21, 1934. The said Adjustment Board is composed of four Divisions, whose proceedings shall be independent of one another. The First, Second and Third Divisions thereof are each composed of 10 members, and the Fourth Division thereof is composed of 6 members.

§ 301.4 Jurisdiction.

(a) *First Division.* The First Division will have jurisdiction over disputes involving train-and yard-service employees of carriers; that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard-service employees.

(b) *Second Division.* The Second Division will have jurisdiction over disputes involving machinists, boilermakers, blacksmiths, sheet-metal workers, electrical workers, car men, the helpers and apprentices of all the foregoing, coach cleaners, power-house employees, and railroad-shop laborers.

(c) *Third Division.* The Third Division will have jurisdiction over disputes involving station tower, and telegraph employees, train dispatchers, maintenance-of-way men, clerical employees, freight handlers, express, station, and store employees, signal men, sleeping-car conductors, sleeping-car porters, and maids and dining-car employees.

(d) *Fourth Division.* The Fourth Division will have jurisdiction over disputes involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water, and all other employees of carriers over which jurisdiction is not

given to the First, Second, and Third Divisions.

§ 301.5 Form of submission.

(a) *Parties.* All parties to the dispute must be stated in each submission.

(b) *Statement of claim.* Under the caption "statement of claims" the petitioner or petitioners must clearly state the particular question upon which an award is desired.

(c) *Statement of facts.* In a "joint statement of facts," if possible, briefly, but fully set forth the controlling facts involved. In the event of inability to agree upon a "joint statement of facts," then each party shall show separately the facts as they respectively believe them to be.

(d) *Position of employees.* Under the caption "position of employees" the employees must clearly and briefly set forth all relevant, argumentative facts, including all documentary evidence submitted in exhibit form, quoting the agreement or rules involved, if any; and all data submitted in support of employees' position must affirmatively show the same to have been presented to the carrier and made a part of the particular question in dispute.

(e) *Position of carrier.* Under the caption "position of carrier" the carrier must clearly and briefly set forth all relevant, argumentative facts, including all documentary evidence submitted in exhibit form, quoting the agreement or rules involved, if any; and all data submitted in support of carrier's position must affirmatively show the same to have been presented to the employees or duly authorized representative thereof and made a part of the particular question in dispute.

(f) *Signatures.* All submissions must be signed by the parties submitting the same.

(g) *Ex parte submission.* In event of an ex parte submission the same general form of submission is required. The petitioner will serve written notice upon the appropriate Division of the Adjustment Board of intention to file an ex parte submission on a certain date (30 days hence), and at the same time provide the other party with copy of such notice. For the purpose of identification such notice will state the question involved and give a brief description of the dispute. The Secretary of the appropriate Division of the Adjustment Board will immediately thereupon advise the other party of the receipt of such notice and request that the submission of such other party be filed with such Division within the same period of time.

§ 301.6 General.

(a) To conserve time and expedite proceedings all parties within the scope of the Adjustment Board should prepare submissions in such manner that the pertinent and related facts and all supporting data bearing upon the dispute will be fully set forth, thus obviating the need of lengthy briefs and unnecessary oral discussions.

(b) All submissions shall be typewritten or machine prepared, addressed to the Secretary of the appropriate Division of the Adjustment Board, and fifteen copies thereof filed by the petitioner or petitioners.

(c) Parties to a dispute are required to state in all submissions whether or not an oral hearing is desired.

§ 301.7 Hearings.

(a) Oral hearings will be granted if requested by the parties or either of them and due notice will be given the parties of the time and date of the hearing.

(b) The parties are, however, charged with the duty and responsibility of including in their original written submission all known relevant, argumentative facts and documentary evidence.

§ 301.8 Appearances.

Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect.

§ 301.9 Awards.

All awards of the Adjustment Board shall be signed by order of the appropriate Division thereof and shall be attested by the signature of its Secretary, as indicated thus:

NATIONAL RAILROAD ADJUSTMENT BOARD,
By Order of————Division
Attest:————————
[Secretary]

73-091 O—86——5

CHAPTER IV—OFFICE OF LABOR-MANAGEMENT STANDARDS, DEPARTMENT OF LABOR

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SUBCHAPTER A—LABOR-MANAGEMENT STANDARDS

EDITORIAL NOTE: Nomenclature changes affecting this Subchapter appear at 42 FR 59070, Nov. 15, 1977, and at 50 FR 31309, Aug. 1, 1985.

PART 401—MEANING OF TERMS USED IN THIS SUBCHAPTER

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AUTHORITY: Secs. 3, 208, 301, 401, 402, 73 Stat. 520, 529, 530, 532, 534; 29 U.S.C. 402, 438, 461, 481, 482; Secretary's Order No. 3-84 (49 FR 20578).

SOURCE: 28 FR 14380, Dec. 27, 1963, unless otherwise noted.

§ 401.1 Commerce.

"Commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.

§ 401.2 State.

"State" includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331-1343).

§ 401.3 Industry affecting commerce.

"Industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor Management Relations Act, 1947, as amended, or the Railway Labor Act, as amended.

§ 401.4 Person.

"Person" includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, or receivers.

(Secs. 3, 208, 301, 401, 402; 73 Stat. 520, 529, 530, 532, 534; 29 U.S.C. 402, 438, 461, 481, 482; Secretary's Order No. 9-77)

[45 FR 70445, Oct. 24, 1980]

§ 401.5 Employer.

"Employer" means any employer or any group or association of employers engaged in an industry affecting commerce (a) which is, with respect to employees engaged in an industry affecting commerce, an employer within the meaning of any law of the United States relating to the employment of any employees or (b) which may deal with any labor organization concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and includes any person acting directly or indirectly as an employer or as an agent of an employer in relation to an employee but does not include the United States or any corporation wholly owned by the Government of the United States or any State or political subdivision thereof.

§ 401.6 Employee.

"Employee" means any individual employed by an employer, and includes any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice or because of exclusion or ex-

pulsion from a labor organization in any manner or for any reason inconsistent with the requirements of this Act.

§ 401.7 Labor dispute.

"Labor dispute" includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

§ 401.8 Trusteeship.

"Trusteeship" means any receivership, trusteeship, or other method of supervision or control whereby a labor organization suspends the autonomy otherwise available to a subordinate body under its constitution or bylaws.

§ 401.9 Labor organization.

"Labor organization" means a labor organization engaged in an industry affecting commerce and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization, other than a State or local central body.

§ 401.10 Labor organization engaged in an industry affecting commerce.

A labor organization shall be deemed to be engaged in an industry affecting commerce if it:

(a) Is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended; or

(b) Although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(c) Has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (a) or (b) of this section; or

(d) Has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (a) or (b) of this section as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(e) Is a conference, general committee, joint or system board, or joint council, subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this section, other than a State or local central body.

§ 401.11 Secret ballot.

"Secret ballot" means the expression by ballot, voting machine, or otherwise, but in no event by proxy, of a choice with respect to any election or vote taken upon any matter, which is cast in such a manner that the person expressing such choice cannot be identified with the choice expressed.

§ 401.12 Trust in which a labor organization is interested.

"Trust in which a labor organization is interested" means a trust or other fund or organization (a) which was created or established by a labor organization, or one or more of the trustees or one or more members of the governing body of which is selected or appointed by a labor organization, and (b) a primary purpose of which is to provide benefits for the members of such labor organization or their beneficiaries.

§ 401.13 Labor relations consultant.

"Labor relations consultant" means any person who, for compensation, advises or represents an employer, em-

ployer organization, or labor organization concerning employee organizing, concerted activities, or collective bargaining activities.

§ 401.14 Officer.

"Officer" means any constitutional officer, any person authorized to perform the functions of president, vice president, secretary, treasurer, or other executive functions of a labor organization, and any member of its executive board or similar governing body.

§ 401.15 Member or member in good standing.

"Member" or "member in good standing", when used in reference to a labor organization, includes any person who has fulfilled the requirements for membership in such organization, and who neither has voluntarily withdrawn from membership nor has been expelled or suspended from membership after appropriate proceedings consistent with lawful provisions of the constitution and bylaws of such organization.

§ 401.16 Secretary.

"Secretary" means the Secretary of Labor.

§ 401.17 Act.

"Act" means the Labor-Management Reporting and Disclosure Act of 1959.

§ 401.18 Office.

"Office" means the Office of Labor-Management Standards, United States Department of Labor.

§ 401.19 Assistant Secretary.

"Assistant Secretary" means the Assistant Secretary of Labor for Labor-Management Standards, head of the Office of Labor-Management Standards.

[50 FR 31309, Aug. 1, 1985]

PART 402—LABOR ORGANIZATION INFORMATION REPORTS

Sec.

402.1 Labor organization constitution and bylaws.
402.2 Labor organization initial information report.
402.3 Filing of initial reports.
402.4 Subsequent reports.
402.5 Terminal reports.
402.6 Receipt of reports and documents.
402.7 Effect of acknowledgment and filing by the Office of Labor-Management Standards.
402.8 Personal responsibility of signatories of reports.
402.9 Maintenance and retention of records.
402.10 Dissemination and verification of reports.
402.11 Attorney-client communications exempted.
402.12 Publication of reports required by this part.

AUTHORITY: Secs. 201, 208, 73 Stat. 524, 529; 29 U.S.C. 431, 438; Secretary's Order No. 3-84 (49 FR 20578).

SOURCE: 28 FR 14381, Dec. 27, 1963, unless otherwise noted.

§ 402.1 Labor organization constitution and bylaws.

Every labor organization shall adopt a constitution and bylaws consistent with the provisions of the Act applicable thereto, within 90 days after the date the labor organization first becomes subject to the Act. This shall not, however, require the formal readoption by a labor organization of such a constitution and bylaws which it has previously adopted and under which it is operating when the report prescribed by § 402.2 is filed. As used in this part "constitution and bylaws" means the basic written rules governing the organization.

[28 FR 14381, Dec. 27, 1963, as amended at 40 FR 58856, Dec. 19, 1975]

§ 402.2 Labor organization initial information report.

Every labor organization shall file a report signed by its president and secretary or corresponding principal officers containing the information required to be filed by section 201(a) of the Act, and found necessary to be reported under section 208 thereof by the Assistant Secretary, on United States Department of Labor Form LM-1 [1] entitled, "Labor Organization

[1] Filed as part of the original document.

Information Report". There shall be attached to such report and made a part thereof a copy of the constitution and bylaws adopted by the reporting labor organization.

[28 FR 14381, Dec. 27, 1963, as amended at 50 FR 31309, Aug. 1, 1985]

§ 402.3 Filing of initial reports.

(a) Every labor organization shall file with the Office of Labor-Management Standards the report and (subject to the provisions of paragraph (b) of this section, where applicable) a copy of its constitution and bylaws required by section 201(a) of the Act and § 402.2, together with one additional copy of each, within 90 days after the date on which it first becomes subject to the Act.

(b) A labor organization subject to paragraph (a) of this section may adopt or may have adopted as its constitution and bylaws (whether by formal action or by virtue of affiliation with a parent organization) a constitution and bylaws of a national or international labor organization which the national or international organization is required to file under section 201(a) of the Act and this part. In such a case, a filing by the national or international labor organization of copies of such constitution and bylaws will be accepted as a filing of such documents by each such adopting labor organization within the meaning of section 201(a) of the Act and this part, if the following conditions are met: (1) The national or international labor organizations shows in its report filed under paragraph (a) of this section that copies of its constitution and bylaws are being filed on behalf of such adopting organizations as well as on its own behalf, and files such number of additional copies as the Office of Labor-Management Standards may request, and (2) the adopting labor organization shows in its report filed under paragraph (a) of this section that the national or international constitution and bylaws are also its constitution and bylaws and that copies are filed on its behalf by the national or international labor organization. If the constitution and bylaws of the adopting labor organization include other documents, this shall be shown in such report and copies shall be filed as provided in paragraph (a) of this section.

[28 FR 14381, Dec. 27, 1963, as amended at 35 FR 2990, Feb. 13, 1970; 40 FR 58856, Dec. 19, 1975; 50 FR 31309, Aug. 1, 1985]

§ 402.4 Subsequent reports.

(a) Every labor organization shall update the information filed in its information report (Form LM-1), by filing two copies of Form LM-1A, entitled "Report of Current Status: Labor Organization Information Supplement," together with two copies of any documents called for by that form for each reporting period in which there have been changes in the constitution and bylaws or in the practices or procedures for which separate statements must be filed pursuant to subsection 201(a)(5) (A) through (M) of the Labor-Management Reporting and Disclosure Act. Such subsequent reports shall be filed when the labor organization files its annual financial report as provided in Part 403 of this chapter. Reports on Form LM-1A shall be signed by the president and treasurer or corresponding principal officers of the labor organization filing the reports.

(b) A labor organization which has adopted or had adopted as its constitution and bylaws a uniform constitution and bylaws prescribed by its parent national or international labor organization in accordance with § 402.3(b) is not required to file Form LM-1A when changes are made in that constitution and bylaws if the following conditions are met:

(1) The parent national or international labor organization files as many copies of the amended uniform constitution and bylaws with the Office of Labor-Management Standards as the Office may request;

(2) There have been no changes in practices described by the subordinate labor organization in the latest statements submitted in response to question 18 on Form LM-1 or question 10 on Form LM-1A; and

(3) There have been no changes in any additional constitution, bylaws, or other governing rules adopted by the subordinate labor organization.

If the above conditions are met, the labor organization should check item 18 on Form LM-3 or item 20 on Form LM-2 "yes" with an asterisk and add a statement similar to the following in the additional information space on the form:

"This labor organization is not filing Form LM-1A because the only changes in our governing rules were in a uniform constitution prescribed by our parent body which is filing the required number of copies, and there have been no changes in practices described in the latest statements submitted with Form LM-1 or Form LM-1A."

[40 FR 58856, Dec. 19, 1975, as amended at 42 FR 6807, Feb. 4, 1977; 50 FR 31309, Aug. 1, 1985]

§ 402.5 Terminal reports.

(a) Any labor organization required to file reports under the provisions of this part, which ceases to exist by virtue of dissolution or any other form of termination of its existence as a labor organization, or which loses its identity as a reporting labor organization through merger, consolidation or otherwise, shall file a report containing a detailed statement of the circumstances and effective date of such termination or loss of reporting identity, and if the latter, such report shall also state the name and mailing address of the labor organization into which it has been consolidated, merged, or otherwise absorbed. Such report shall be submitted on Form LM-2 in connection with the terminal financial report required by § 403.5 of this chapter and shall be signed by the president and treasurer, or corresponding principal officers, of the labor organization at the time of its termination or loss of reporting identity and, together with a copy thereof, shall be filed with the Office of Labor-Management Standards, within 30 days of the effective date of such termination or loss of reporting identity, as the case may be.

(b) Labor organizations which qualify to use Form LM-3, the Labor Organization Annual Report, pursuant to §§ 403.4 and 403.5 of this chapter may file the terminal report called for in this section on Form LM-3. This report must be signed by the president and treasurer, or corresponding principal officers, of the labor organization.

§ 402.6 Receipt of reports and documents.

Upon receipt of all reports and documents submitted for filing under the provisions of this part, the Office of Labor-Management Standards shall assign to the initial information report filed by each labor organization, an identifying number. This number thereafter shall be entered by the reporting labor organization on all subsequent or terminal reports and all other documents which it thereafter submits for filing under this part, as well as on all communications directed to the Office concerning such reports and documents.

§ 402.7 Effect of acknowledgment and filing by the Office of Labor-Management Standards.

Acknowledgment by the Office of Labor-Management Standards of the receipt of reports and documents submitted for filing under this part, is intended solely to inform the sender of the receipt thereof by the Office, and neither such acknowledgment nor the filing of such reports and documents by the Office constitutes express or implied approval thereof, or in any manner indicates that the content of any such report or document fulfills the reporting or other requirements of the Act, or of the regulations in this chapter, applicable thereto.

§ 402.8 Personal responsibility of signatories of reports.

Each individual required to sign any report under section 201(a) of the Act and under this part shall be personally responsible for the filing of such report and for any statement contained therein which he knows to be false.

§ 402.9 Maintenance and retention of records.

Every person required to file any report under this part shall maintain records on the matters required to be reported which will provide in sufficient detail the necessary basic information and data from which the documents filed with the Office of Labor-Management Standards may be verified, explained or clarified, and checked for accuracy and complete-

ness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than five years after the filing of the documents based on the information which they contain.

§ 402.10 Dissemination and verification of reports.

Every labor organization required to submit a report under section 201(a) of the Act and under this part shall make available to all its members the information required to be contained in such report, including the copy of the constitution and bylaws required to be filed therewith, and every such labor organization and its officers shall be under a duty to permit such member for just cause to examine any books, records, and accounts necessary to verify such report and constitution and bylaws.

[28 FR 14381, Dec. 27, 1963, as amended at 50 FR 31309, Aug. 1, 1985]

§ 402.11 Attorney-client communications exempted.

Nothing contained in this part shall be construed to require an attorney who is a member in good standing of the bar of any State, to include in any report required to be filed pursuant to the provisions of section 201(a) of the Act, and of this part, any information which was lawfully communicated to such attorney by any of his clients in the course of a legitimate attorney-client relationship.

§ 402.12 Publication of reports required by this part.

Inspection and examination of any report or other document filed as required by this part, and the furnishing by the Office of Labor-Management Standards of copies thereof to any person requesting them, shall be governed by Part 70 of this title.

[35 FR 2990, Feb. 13, 1970]

PART 403—LABOR ORGANIZATION ANNUAL FINANCIAL REPORTS

Sec.

403.1 Fiscal year for reports required by this part.
403.2 Annual financial report.
403.3 Form of annual financial report—detailed report.
403.4 Simplified annual reports for smaller labor organizations.
403.5 Terminal financial report.
403.6 Personal responsibility of signatories of reports.
403.7 Maintenance and retention of records.
403.8 Dissemination and verification of reports.
403.9 Attorney-client communications exempted.
403.10 Publication of reports required by this part.

AUTHORITY: Secs. 201, 208, 301, 73 Stat. 524, 529, 530; 29 U.S.C. 431, 438, 461; Secretary's Order No. 3-84 (49 FR 20578).

SOURCE: 28 FR 14383, Dec. 27, 1963, unless otherwise noted.

§ 403.1 Fiscal year for reports required by this part.

(a) As used in this part, unless otherwise defined, the term "fiscal year" means the calendar year or other period of 12 consecutive calendar months, on the basis of which financial accounts are kept by a labor organization reporting under this part. Where a labor organization designates a new fiscal year period prior to the expiration of a previously established fiscal year period, the resultant period of less than 12 consecutive calendar months, and thereafter the newly established fiscal year, shall in that order each constitute a fiscal year for purposes of the report required to be filed by section 201(b) of the Act, and of the regulations in this part.

(b) A labor organization which is subject to section 201(b) of the Act for only a portion of its fiscal year because the labor organization first becomes subject to the Act during such fiscal year, may consider such portion as the entire fiscal year in making its report under this part.

[28 FR 14383, Dec. 27, 1963, as amended at 42 FR 59070, Nov. 15, 1977]

§ 403.2 Annual financial report.

(a) Every labor organization shall, as prescribed by the regulations in this part, file with the Office of Labor-Management Standards, within 90 days after the end of each of its fiscal years, a financial report signed by its president and treasurer, or corresponding principal officers, together with a true copy thereof.

(b) Every labor organization shall include in its annual financial report filed as provided in paragraph (a) of this section, in such detail as may be necessary accurately to disclose its financial condition and operations for its preceding fiscal year and in such categories as prescribed by the Assistant Secretary under the provisions of this part, the information required by section 201(b) of the Act and found by the Assistant Secretary under section 208 thereof to be necessary in such report.

(c) If, on the date for filing the annual financial report of a labor organization required under section 201(b) of the Act and this section, such labor organization is in trusteeship, the labor organization which has assumed trusteeship over such labor organization shall file such report as provided in § 408.5 of this chapter.

[28 FR 14383, Dec. 27, 1963, as amended at 50 FR 31309, Aug. 1, 1985]

§ 403.3 Form of annual financial report—detailed report.

Every labor organization shall, except as expressly provided otherwise in this part, file an annual financial report as required by § 403.2, prepared on United States Department of Labor Form LM-2, "Labor Organization Annual Report," in the detail required by the instructions accompanying the form and constituting a part thereof.

§ 403.4 Simplified annual reports for smaller labor organizations.

(a) If a labor organization, not in trusteeship, has gross annual receipts totaling less than $100,000 for its fiscal year, it may elect, subject to revocation of the privileges as provided in section 208 of the Act, to file the annual financial report called for in section 201(b) of the Act and § 403.3 of this part on United States Department of Labor Form LM-3 entitled "Labor Organization Annual Report," in accordance with the instructions accompanying such form and constituting a part thereof.

(b) A local labor organization not in trusteeship, which has no assets, no liabilities, no receipts and no disbursements during the period covered by the annual report of the national organization with which it is affiliated need not file the annual report required by § 403.2 if the following conditions are met:

(1) It is governed by a uniform constitution and bylaws filed on its behalf pursuant to § 402.3(b) of this chapter, and does not have governing rules of its own;

(2) Its members are subject to uniform fees and dues applicable to all members of the local labor organizations for which such simplified reports are submitted;

(3) The national organization with which it is affiliated assumes responsibility for the accuracy of, and submits with its annual report, a separate sheet no smaller than 8 inches by 10 inches and no larger than 8½ inches by 14 inches in duplicate for each local labor organization containing the following information with respect to each local organization in the format illustrated below as part of this regulation:

(i) The name and designation number or other identifying information;

(ii) The file number which the Office of Labor-Management Standards has assigned to it;

(iii) The mailing address;

(iv) The beginning and ending date of the reporting period which must be the same as that of the report for the national organization;

(v) The city, county, and State where it is chartered to operate;

(vi) The names and titles of the officers as of the end of the reporting period;

(4) At least thirty days prior to first submitting simplified annual reports in accordance with this section, the national organization notifies the Office of Labor-Management Standards in writing of its intent to begin

submitting simplified annual reports for affiliated local labor organizations;

(5) The national organization files the terminal report required by 29 CFR 403.5(a) on Form LM-3, clearly labeled on the form as a terminal report, for any local labor organization which has lost its identity through merger, consolidation, or otherwise if the national organization filed a simplified annual report on behalf of the local labor organization for its last reporting period; and

(6) The national organization with which it is affiliated assumes responsibility for the accuracy of, and submits with its annual report and the simplified annual reports for the affiliated local labor organizations, the following certification in duplicate properly completed and signed by the president and treasurer of the national organization:

CERTIFICATION

We, the undersigned, duly authorized officers of [name of national organization], hereby certify that the local labor organizations individually listed on the attached documents come within the purview of 29 CFR 403.4(b) for the reporting period from [beginning date of national organization's fiscal year] through [ending date of national organization's fiscal year], namely:

(1) they are local labor organizations; (2) they are not in trusteeship; (3) they have no assets, liabilities, receipts, or disbursements; (4) they are governed by a uniform constitution and bylaws, and fifty copies of the most recent uniform constitution and bylaws have been filed with the Office of Labor-Management Standards; (5) they have no governing rules of their own; and (6) they are subject to the following uniform schedule of fees and dues: [specify schedule for dues, initiation fees, fees required from transfer members, and work permit fees, as applicable].

Each document attached contains the specific information called for in 29 CFR 403.4(b)(3)(i)-(vi), namely: (i) the local labor organization's name and designation number; (ii) the file number assigned the organization by the Office of Labor-Management Standards; (iii) the local labor organization's mailing address; (iv) the beginning and ending date of the reporting period; (v) the city, county and state where the local labor organization is chartered to operate; and (vi) the names and titles of the officers of the local labor organization as of [the ending date of the national organization's fiscal year].

Furthermore, we certify that the terminal reports required by 29 CFR 403.4(b)(5) and 29 CFR 403.5(a) have been filed for any local labor organizations which have lost their identity through merger, consolidation, or otherwise on whose behalf a simplified annual report was filed for the last reporting period.

(FORMAT FOR SIMPLIFIED ANNUAL REPORTING)

SIMPLIFIED ANNUAL REPORT

Affiliation name:

_____

Designation name and number:

_____

Unit name:

_____

Mailing address:

_____

Name of person:

_____

Number and street:

_____

City, State and zip:

_____

File number:

_____

Period covered:

_____

From Through

_____

Where chartered to operate

_____

City:

_____

County:

_____

State:

_____

Names and Titles of all officers:

_____

For certification see NHQ file folder file number:

_____

President _____
Where signed _____
Date _____

Treasurer _____
Where signed _____
Date _____

[28 FR 14383, Dec. 27, 1963, as amended at 37 FR 10669, May 26, 1972; 41 FR 27318, July 2, 1976; 45 FR 7525, Feb. 1, 1980; 50 FR 31309, Aug. 1, 1985; 50 FR 31310, Aug. 1, 1985]

§ 403.5 Terminal financial report.

(a) Any labor organization required to file a report under the provisions of this part, which during its fiscal year loses its identity as a reporting labor organization through merger, consolidation, or otherwise, shall, within 30 days after such loss, file a terminal financial report, and one copy, with the Office of Labor-Management Standards, on Form LM-2 or Form LM-3, as may be appropriate, signed by the president and treasurer or corresponding principal officers of the labor organization immediately prior to the time of its loss of reporting identity.

(b) Every labor organization which has assumed trusteeship over a subordinate labor organization shall file within 90 days after the termination of such trusteeship on behalf of the subordinate labor organization a terminal financial report, and one copy, with the Office of Labor-Management Standards, on Form LM-2 and in conformance with the requirements of this part.

(c) For purposes of the reports required by paragraphs (a) and (b) of this section, the period covered thereby shall be the portion of the labor organization's fiscal year ending on the effective date of its loss of reporting identity, or the portion of the subordinate labor organization's fiscal year ending on the effective date of the termination of trusteeship over such subordinate labor organization, as the case may be.

[28 FR 14383, Dec. 27, 1963, as amended at 50 FR 31309, 31310, Aug. 1, 1985]

§ 403.6 Personal responsibility of signatories of reports.

Each individual required to sign a report under section 201(b) of the Act and under this part shall be personally responsible for the filing of such report and for any statement contained therein which he knows to be false.

§ 403.7 Maintenance and retention of records.

Every person required to file any report under this part shall maintain records on the matters required to be reported which will provide in sufficient detail the necessary basic information and data from which the documents filed with the Office of Labor-Management Standards, may be verified, explained or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than five years after the filing of the documents based on the information which they contain.

§ 403.8 Dissemination and verification of reports.

Every labor organization required to submit a report under section 201(b) of the Act and under this part shall make available to all its members the information required to be contained in such reports, and every such labor organization and its officers shall be under a duty to permit such member for just cause to examine any books, records, and accounts necessary to verify such report.

§ 403.9 Attorney-client communications exempted.

Nothing contained in this part shall be construed to require an attorney who is a member in good standing of the bar of any State, to include in any report required to be filed pursuant to the provisions of section 201(b) of the Act, and of this part, any information which was lawfully communicated to such attorney by any of his clients in the course of a legitimate attorney-client relationship.

§ 403.10 Publication of reports required by this part.

Inspection and examination of any report or other document filed as required by this part, and the furnishing by the Office of Labor-Management Standards of copies thereof to any

person requesting them, shall be governed by Part 70 of this title.

[35 FR 2990, Feb. 13, 1970]

PART 404—LABOR ORGANIZATION OFFICERS AND EMPLOYEES REPORT

Sec.
404.1 Definitions.
404.2 Annual report.
404.3 Form of annual report.
404.4 Special report.
404.5 Attorney-client communications exempted.
404.6 Personal responsibility of signatories of reports.
404.7 Maintenance and retention of records.
404.8 Publication of reports required by this part.

AUTHORITY: Secs. 202, 208, 73 Stat. 525, 529; 29 U.S.C. 432, 438; Secretary's Order No. 3-84 (49 FR 20578).

SOURCE: 28 FR 14384, Dec. 27, 1963, unless otherwise noted.

§ 404.1 Definitions.

As used in this part the term:

(a)(1) "Fiscal year" means the calendar year or other period of 12 consecutive calendar months, on the basis of which financial accounts of the labor organization officer or employee are kept. Where a labor organization officer or employee designates a new fiscal year period prior to the expiration of a previously established fiscal year period, the resultant period of less than 12 consecutive calendar months, and thereafter the newly established fiscal year, shall in that order constitute the fiscal year for purposes of the reports required to be filed by section 202(a) of the Act and the regulations in this part.

(2) A labor organization officer or employee who is subject to section 202(a) of the Act for only a portion of his fiscal year because the labor organization officer or employee first becomes subject to the Act during such fiscal year, may consider such portion as the entire fiscal year in making this report under this part.

(b) "Labor organization officer" means any constitutional officer, any person authorized to perform the functions of president, vice president, secretary, treasurer, or other executive functions of a labor organization, and any member of its executive board or similar governing body.

(c) "Labor organization employee" means any individual (other than an individual performing exclusively custodial or clerical services) employed by a labor organization.

(d) "Employer" means any employer or any group or association of employers engaged in an industry affecting commerce (1) which is, with respect to employees engaged in an industry affecting commerce, an employer within the meaning of any law of the United States relating to the employment of any employees or (2) which may deal with any labor organization concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and includes any person acting directly or indirectly as an employer or as an agent of an employer in relation to an employee but does not include the United States or any corporation wholly owned by the Government of the United States or any State or political subdivision thereof.

[28 FR 14384, Dec. 27, 1963, as amended at 50 FR 31310, Aug. 1, 1985]

§ 404.2 Annual report.

Every labor organization officer and employee who in any fiscal year has been involved in transactions of the type described in section 202(a) of the Act, or who holds or has held any interest in an employer or a business of the type referred to therein, or who has received any payments of the type referred to in that section, or who holds or has held an interest in or derived income or economic benefit with monetary value from a business any part of which consists of dealing with a trust in which his labor organization is interested, or whose spouse or minor child has been involved in such transactions, holds or has held any such interests, or has received such payments, is required to file with the Office of Labor-Management Standards, within 90 days after the end of his fiscal year, a signed report containing the detailed information required therein by section 202(a) of the Act, and found by the Assistant Secretary under section

208 thereof to be necessary in such report.

[28 FR 14384, Dec. 27, 1963, as amended at 50 FR 31309, Aug. 1, 1985]

§ 404.3 Form of annual report.

On and after the effective date of this section, every labor organization officer and employee required to file an annual report under § 404.2 shall file such report on United States Department of Labor Form LM-30 entitled "Labor Organization Officer and Employee Report," together with a true copy thereof, in the detail required by the instructions accompanying such form and constituting a part thereof.

§ 404.4 Special report.

In addition to the report on Form LM-30, the Office of Labor-Management Standards may require from union officers and employees subject to the Act the submission of special reports of pertinent information including, but not necessarily confined to, reports with respect to matters referred to in items (ii) and (iv) of the Instructions relating to Part A of the form and items (ii) and (iii) of the Instructions relating to Part C of the form.

§ 404.5 Attorney-client communications exempted.

Nothing contained in this part shall be construed to require an attorney who is a member in good standing of the bar of any State, to include in any report required to be filed pursuant to the provisions of section 202(a) of the Act and of this part any information which was lawfully communicated to such attorney by any of his clients in the course of a legitimate attorney-client relationship.

§ 404.6 Personal responsibility of signatories of reports.

Every labor organization officer or employee required to file a report under section 202(a) of the Act and under this part shall be personally responsible for the filing of such report and for any statement contained therein which he knows to be false.

§ 404.7 Maintenance and retention of records.

Every person required to file any report under this part shall maintain records on the matters required to be reported which will provide in sufficient detail the necessary basic information and data from which the documents filed with the Office of Labor-Management Standards may be verified, explained or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than five years after the filing of the documents based on the information which they contain.

§ 404.8 Publication of reports required by this part.

Inspection and examination of any report or other document filed as required by this part, and the furnishing by the Office of Labor-Management Standards of copies thereof to any person requesting them, shall be governed by Part 70 of this title.

[35 FR 2990, Feb. 13, 1970]

PART 405—EMPLOYER REPORTS

Sec.

405.1 Definitions.
405.2 Annual report.
405.3 Form of annual report.
405.4 Terminal report.
405.5 Special reports.
405.6 Exceptions from the filing requirements of § 405.2.
405.7 Relation of section 8(c) of the National Labor Relations Act, as amended, to the reporting requirements of § 405.2.
405.8 Personal responsibility of signatories of reports.
405.9 Maintenance and retention of records.
405.10 Publication of reports required by this part.

AUTHORITY: Secs. 203, 208, 73 Stat. 526, 529; 29 U.S.C. 433, 438; Secretary's Order No. 3-84 (49 FR 20578).

SOURCE: 28 FR 14384, Dec. 27, 1963, unless otherwise noted.

§ 405.1 Definitions.

As used in this part the term:

(a) "Fiscal year" means the calendar year or other period of 12 consecutive calendar months, on the basis of which financial accounts are kept by an employer. Where an employer designates a new fiscal year period prior to the expiration of a previously established fiscal year period, the resultant period of less than 12 consecutive calendar months, and thereafter the newly established fiscal year, shall in that order constitute the fiscal year for purposes of the reports required to be filed by section 203(a) of the Act and of the regulations in this part.

(b) "Corresponding principal officers" shall include any person or persons performing or authorized to perform principal executive functions corresponding to those of president and treasurer, of any employer engaged in whole or in part in the performance of the activities described in section 203(a) of the Act.

[28 FR 14384, Dec. 27, 1963, as amended at 42 FR 59070, Nov. 15, 1977]

§ 405.2 Annual report.

Every employer who in any fiscal year has made any payment, loan, promise, agreement, arrangement or expenditure of the kind described and required by section 203(a) of the Act to be reported, shall, as prescribed by the regulations in this part, file with the Office of Labor-Management Standards, within 90 days after the end of each of its fiscal years, a report signed by its president and treasurer, or corresponding principal officers, together with a true copy thereof, containing the detailed information required therein by section 203(a) of the Act and found by the Assistant Secretary under section 208 thereof to be necessary in such report.

[28 FR 14384, Dec. 27, 1963, as amended at 50 FR 31309, Aug. 1, 1985]

§ 405.3 Form of annual report.

On and after the effective date of this section, every employer required to file an annual report by section 203(a) of the Act and § 405.2 shall file such report on the United States Department of Labor Form LM-10 entitled, "Employer Report"[1] in the detail required by the instructions[1] accompanying such form and constituting a part thereof.

[28 FR 14384, Dec. 27, 1963, as amended at 38 FR 10715, May 1, 1973; 42 FR 59070, Nov. 15, 1977]

§ 405.4 Terminal report.

(a) Every employer required to file a report under the provisions of this part, who during its fiscal year loses its identity as a reporting employer through merger, consolidation, dissolution, or otherwise, shall, within 30 days of the effective date thereof, file a terminal employer report, and one copy, with the Office of Labor-Management Standards on Form LM-10 signed by the president and treasurer or corresponding principal officers of such employer immediately prior to the time of the employer's loss of reporting identity, together with a statement of the effective date of such termination or loss of reporting identity, and if the latter, the name and mailing address of the employer entity into which it has been merged, consolidated or otherwise absorbed.

(b) For purposes of the report required by paragraph (a) of this section, the period covered thereby shall be the portion of the employer's fiscal year ending on the effective date of the employer's termination or loss of reporting identity.

§ 405.5 Special reports.

In addition to the report on Form LM-10, the Office of Labor-Management Standards may require from employers subject to the Act the submission of special reports on pertinent information, including but not necessarily confined to reports with respect to specifically identified personnel on the matters referred to in the second paragraph under the instructions for Question 8A of Form LM-10.

[42 FR 59070, Nov. 15, 1977]

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[1] Filed as part of the original document.

§ 405.6 Exceptions from the filing requirements of § 405.2.

Nothing contained in this part shall be construed to require:

(a) An employer to file a report unless said employer has made an expenditure, payment, loan, agreement, or arrangement of the kind described in section 203(a) of the Act;

(b) Any employer to file a report covering the services of any person by reason of his (1) giving or agreeing to give advice to such employer or (2) representing or agreeing to represent such employer before any court, administrative agency, or tribunal of arbitration or (3) engaging or agreeing to engage in collective bargaining on behalf of such employer with respect to wages, hours, or other terms or conditions of employment or the negotiation of an agreement or any question arising thereunder;

(c) Any employer to file a report covering expenditures made to any regular officer, supervisor, or employee of an employer as compensation for service as a regular officer, supervisor, or employee of such employer;

(d) An attorney who is a member in good standing of the bar of any State, to include in any report required to be filed pursuant to the provisions of this part any information which was lawfully communicated to such attorney by any of his clients in the course of a legitimate attorney-client relationship.

§ 405.7 Relation of section 8(c) of the National Labor Relations Act, as amended, to the reporting requirements of § 405.2.

While nothing contained in section 203 of the Act shall be construed as an amendment to, or modification of the rights protected by section 8(c) of the National Labor Relations Act, as amended, activities protected by such section of the said Act are not for that reason exempted from the reporting requirements of section 203(a) of the Labor-Management Reporting and Disclosure Act of 1959 and § 405.2, and, if otherwise subject to such reporting requirements, are required to be reported if they have been engaged in during the course of the reporting fiscal year. However, the information required to be reported in Question 8C of Form LM-10 does not include matters protected by section 8(c) of the National Labor Relations Act, as amended, because the definition in section 203(g) of the term "interfere with, restrain, or coerce", which is used in Question 8C does not cover such matters.

[42 FR 59070, Nov. 15, 1977]

§ 405.8 Personal responsibility of signatories of reports.

Each individual required to sign a report under section 203(a) of the Act and under this part shall be personally responsible for the filing of such report and for any statement contained therein which he knows to be false.

§ 405.9 Maintenance and retention of records.

Every person required to file any report under this part shall maintain records on the matters required to be reported which will provide in sufficient detail the necessary basic information and data from which the documents filed with the Office of Labor-Management Standards may be verified, explained or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than five years after the filing of the documents based on the information which they contain.

§ 405.10 Publication of reports required by this part.

Inspection and examination of any report or other document filed as required by this part, and the furnishing by the Office of Labor-Management Standards of copies thereof to any person requesting them, shall be governed by Part 70 of this title.

[35 FR 2990, Feb. 13, 1970]

PART 406—REPORTING BY LABOR RELATIONS CONSULTANTS AND OTHER PERSONS, CERTAIN AGREEMENTS WITH EMPLOYERS

Sec.

406.1 Definitions.
406.2 Agreement and activities report.
406.3 Receipts and disbursements report.
406.4 Terminal report.
406.5 Persons excepted from filing reports.
406.6 Relation of section 8(c) of the National Labor Relations Act to this part.
406.7 Personal responsibility of signatories of reports.
406.8 Maintenance and retention of records.
406.9 Publication of reports required by this part.

AUTHORITY: Secs. 203, 207, 208, 73 Stat. 526, 529; 29 U.S.C. 433, 437, 438; Secretary's Order No. 3-84 (49 FR 20578).

SOURCE: 28 FR 14385, Dec. 27, 1963, unless otherwise noted.

§ 406.1 Definitions.

As used in this part, the term:

(a) "Corresponding principal officers" means any person or persons performing or authorized to perform, principal executive functions corresponding to those of president and treasurer of any entity engaged in whole or in part in the performance of the activities described in section 203(b) of the Labor-Management Reporting and Disclosure Act of 1959.

(b) "Fiscal year" means the calendar year or other period of 12 consecutive calendar months, on the basis of which financial accounts are kept by a person. Where a person designated a new fiscal year prior to the expiration of a previously established fiscal year period, the resultant period of less than 12 consecutive calendar months, and thereafter the newly established fiscal year, shall in that order constitute the fiscal years.

(c) "Undertake" means not only the performing of activities, but also the agreeing to perform them or to have them performed.

(d) "A direct or indirect party to an agreement or arrangement" includes persons who have secured the services of another or of others in connection with an agreement or arrangement of the type referred to in § 406.2 as well as persons who have undertaken activities at the behest of another or of others with knowledge or reason to believe that they are undertaken as a result of an agreement or arrangement between an employer and any other person, except bona fide regular officers, supervisors or employees of their employer to the extent to which they undertook to perform services as such bona fide regular officers, supervisors or employees of their employer.

[28 FR 14385, Dec. 27, 1963, as amended at 42 FR 59070, Nov. 15, 1977]

§ 406.2 Agreement and activities report.

(a) Every person who as a direct or indirect party to any agreement or arrangement with an employer undertakes, pursuant to such agreement or arrangement, any activities where an object thereof is, directly or indirectly, (1) to persuade employees to exercise or not to exercise, or to persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing; or, (2) to supply an employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding; shall, as prescribed by the regulations in this part, file a report with the Office of Labor-Management Standards, and one copy thereof, on Form LM-20 [1] entitled "Agreement and Activities Report (required of persons, including labor relations consultants and other individuals and organizations)" in the detail required by such form and the instructions accompanying such form and constituting a part thereof. The report shall be filed within 30 days after entering into an agreement or arrangement of the type described in this section. If there is any change in the information reported (other than that required by Item C, 10, (c) of the Form), it must be filed in a report clearly marked "Amended Report" within 30 days of the change.

[1] Filed as part of the original document.

(b) The report shall be signed by the president and treasurer or corresponding principal officers of the reporting person. If the report is filed by an individual in his own behalf, it need only bear his signature.

[28 FR 14385, Dec. 27, 1963, as amended at 50 FR 31309, Aug. 1, 1985]

§ 406.3 Receipts and disbursements report.

(a) Every person who, as a direct or indirect party to any agreement or arrangement, undertakes any activities of the type described in § 406.2 pursuant to such agreement or arrangement and who, as a result of such agreement or arrangement made or received any payment during his fiscal year, shall, as prescribed by the regulations in this part, file a report and one copy thereof, with the Office of Labor-Management Standards, on Form LM-21 [1] entitled "Receipts and Disbursements Report (required of persons, including labor relations consultants, other individuals and organizations)", in the detail required by such form and the instructions accompanying such form and constituting a part thereof. The report shall be filed within 90 days after the end of such person's fiscal year during which payments were made or received as a result of such an agreement or arrangement.

(b) The report shall be signed by the president and treasurer or corresponding principal officers of the reporting person. If the report is filed by an individual in his own behalf, it need only bear his signature.

[28 FR 14385, Dec. 27, 1963, as amended at 50 FR 31310, Aug. 1, 1985]

§ 406.4 Terminal report.

(a) Every person required to file a report pursuant to the provisions of this part who during his fiscal year loses his identity as a reporting entity through merger, consolidation, dissolution, or otherwise shall within 30 days of the effective date thereof or of the effective date of this section, whichever is later, file a terminal report, and one copy thereof, with the Office of Labor-Management Standards, on Form LM-21 signed by the president and treasurer or corresponding principal officers immediately prior to the time of the person's loss of reporting identity (or by the person himself if he is an individual), together with a statement of the effective date of termination or loss of reporting identity, and if the latter, the name and mailing address of the entity into which the person reporting has been merged, consolidated or otherwise absorbed.

(b) For purposes of the report referred to in paragraph (a) of this section, the period covered thereby shall be the portion of the reporting person's fiscal year ending on the effective date of the termination or loss of identity.

[28 FR 14385, Dec. 27, 1963, as amended at 50 FR 31310, Aug. 1, 1985]

§ 406.5 Persons excepted from filing reports.

Nothing contained in this part shall be construed to require:

(a) Any person to file a report under this part unless he was a direct or indirect party to an agreement or arrangement of the kind described in § 406.2;

(b) Any person to file a report covering the services of such person by reason of his (1) giving or agreeing to give advice to an employer; or (2) representing or agreeing to represent an employer before any court, administrative agency, or tribunal of arbitration; or (3) engaging or agreeing to engage in collective bargaining on behalf of an employer with respect to wages, hours, or other terms or conditions of employment or the negotiation of an agreement or any question arising thereunder;

(c) Any regular officer, or employee of an employer to file a report in connection with services rendered as such regular officer, supervisor or employee to such employer;

(d) An attorney who is a member in good standing of the bar of any State, to include in any report required to be filed pursuant to the provisions of this part any information which was lawfully communicated to such attorney by any of his clients in the course of a legitimate attorney-client relationship.

§ 406.6 Relation of section 8(c) of the National Labor Relations Act to this part.

While nothing contained in section 203 of the Act shall be construed as an amendment to, or modification of the rights protected by, section 8(c) of the National Labor Relations Act, as amended (61 Stat. 142; 29 U.S.C. 158 (c)), activities protected by such section of the said Act are not for that reason exempted from the reporting requirements of this part and, if otherwise subject to such reporting requirements, are required to be reported. Consequently, information required to be included in Forms LM-20 and 21 must be reported regardless of whether that information relates to activities which are protected by section 8(c) of the National Labor Relations Act, as amended.

§ 406.7 Personal responsibility of signatories of reports.

Each individual required to file a report under this part shall be personally responsible for the filing of such report and for any statement contained therein which he knows to be false.

§ 406.8 Maintenance and retention of records.

Every person required to file any report under this part shall maintain records on the matters required to be reported which will provide in sufficient detail the necessary basic information and data from which the documents filed with the Office of Labor-Management Standards may be verified, explained or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts and applicable resolutions, and shall keep such records available for examination for a period of not less than five years after the filing of the documents based on the information which they contain.

§ 406.9 Publication of reports required by this part.

Inspection and examination of any report or other document filed as required by this part, and the furnishing by the Office of Labor-Management Standards of copies thereof to any person requesting them, shall be governed by Part 70 of this title.

[35 FR 2990, Feb. 13, 1970]

PART 408—LABOR ORGANIZATION TRUSTEESHIP REPORTS

Sec.

408.1 Definitions.
408.2 Initial trusteeship report.
408.3 Form of initial report.
408.4 Semiannual trusteeship report.
408.5 Annual financial report.
408.6 Amendments to the Labor Organization Information Report filed by or on behalf of the subordinate labor organization.
408.7 Terminal trusteeship financial report.
408.8 Terminal trusteeship information report.
408.9 Personal responsibility of signatories of reports.
408.10 Maintenance and retention of records.
408.11 Dissemination and verification of reports.
408.12 Publication of reports required by this part.

AUTHORITY: Secs. 201, 208, 301, 73 Stat. 524, 529, 530; 29 U.S.C. 431, 438, 461; Secretary's Order No. 3-84 (49 FR 20578).

SOURCE: 28 FR 14387, Dec. 27, 1963, unless otherwise noted.

§ 408.1 Definitions.

(a) "Corresponding principal officers" shall include any person or persons performing or authorized to perform principal executive functions corresponding to those of president and treasurer, of any labor organization which has assumed or imposed a trusteeship over a labor organization within the meaning of section 301(a) of the Labor-Management Reporting and Disclosure Act of 1959.

(b) "Trusteeship" means any receivership, trusteeship, or other method of supervision or control whereby a labor organization suspends the autonomy otherwise available to a subordinate body under its constitution or bylaws.

(c) "Policy determining body" means any body which is convened by the parent labor organization or other labor organization which is composed of delegates from labor organizations and which formulates policy on such

matters as wages, hours, or other conditions of employment or recommends or takes any action in the name of the participating labor organizations. Such a body includes, for example, a district council, area conference or joint board.

§ 408.2 Initial trusteeship report.

Every labor organization which has or assumes trusteeship over any subordinate labor organization shall file with the Office of Labor-Management Standards, within 30 days after the imposition of any such trusteeship, a trusteeship report, pursuant to § 408.3, together with a true copy thereof, signed by its president and treasurer, or corresponding principal officers, as well as by the trustees of such subordinate labor organization.

[28 FR 14387, Dec. 27, 1963, as amended at 50 FR 31309, Aug. 1, 1985]

§ 408.3 Form of initial report.

On and after the effective date of this section, every labor organization required to file an initial report under § 408.2 shall file such report on United States Department of Labor Form LM–15 entitled "Trusteeship Report" in the detail required by the instructions accompanying such form and constituting a part thereof.

[28 FR 14387, Dec. 27, 1963, as amended at 42 FR 59070, Nov. 15, 1977]

§ 408.4 Semiannual trusteeship report.

Every labor organization required to file an initial report under § 408.2 shall thereafter during the continuance of trusteeship over the subordinate labor organization, file with the said Office of Labor-Management Standards semiannually, and not later than six months after the due date of the initial trusteeship report, a semiannual trusteeship report on Form LM–15 containing the information required by that form except for the Statement of Assets and Liabilities. If in answer to Item 9 of Form LM–15, there was (a) a convention or other policy determining body to which the subordinate organization sent delegates or would have sent delegates if not in trusteeship or (b) an election of officers of the labor organization assuming trusteeship, Form LM–15A should be used to report the required information with respect thereto.

[42 FR 59070, Nov. 15, 1977]

§ 408.5 Annual financial report.

During the continuance of a trusteeship, the labor organization which has assumed trusteeship over a subordinate labor organization, shall file with the Office of Labor-Management Standards on behalf of the subordinate labor organization the annual financial report required by Part 403 of this chapter, signed by the president and treasurer or corresponding principal officers of the labor organization which has assumed such trusteeship, and the trustees of the subordinate labor organization on Form LM–2, together with one true copy thereof.

§ 408.6 Amendments to the Labor Organization Information Report filed by or on behalf of the subordinate labor organization.

During the continuance of a trusteeship, the labor organization which has assumed trusteeship over a subordinate labor organization, shall file with the Office of Labor-Management Standards on behalf of the subordinate labor organization any change in the information required by Part 402 of this chapter by filing the Form LM–1A, if required, at the same time it files the annual financial report referred to in § 408.5.

[40 FR 58856, Dec. 19, 1975]

§ 408.7 Terminal trusteeship financial report.

Each labor organization which has assumed trusteeship over a subordinate labor organization shall file within 90 days after the termination of such trusteeship on behalf of the subordinate labor organization a terminal financial report, and one copy, with the Office of Labor-Management Standards, on Form LM–2 and in conformance with the requirements of Part 403 of this chapter.

§ 408.8 Terminal trusteeship information report.

There shall be filed at the same time that the terminal trusteeship financial report is filed a terminal trusteeship information report on Form LM-16. If in answer to Item 6 of Form LM-16, there was (a) a convention or other policy determining body to which the subordinate organization sent delegates or would have sent delegates if not in trusteeship or (b) an election of officers of the labor organization assuming trusteeship, Form LM-15A should be used to report the required information with respect thereto.

[40 FR 58856, Dec. 19, 1975]

§ 408.9 Personal responsibility of signatories of reports.

Each individual required to sign a report under this part shall be personally responsible for the filing of such report and for any statement contained therein which he knows to be false.

§ 408.10 Maintenance and retention of records.

Every person required to file any report under this part shall maintain records on the matters required to be reported which will provide in sufficient detail the necessary basic information and data from which the documents filed with the Office of Labor-Management Standards may be verified, explained or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than five years after the filing of the documents based on the information which they contain.

§ 408.11 Dissemination and verification of reports.

Every labor organization required to submit a report shall make available the information required to be contained in such report to all of its members, and every such labor organization and its officers shall be under a duty to permit such member for just cause to examine any books, records, and accounts necessary to verify such report.

§ 408.12 Publication of reports required by this part.

Inspection and examination of any report or other document filed as required by this part, and the furnishing by the Office of Labor-Management Standards of copies thereof to any person requesting them, shall be governed by Part 70 of this title.

[35 FR 2990, Feb. 13, 1970]

PART 409—REPORTS BY SURETY COMPANIES

Sec.
409.1 Definitions.
409.2 Annual report.
409.3 Time for filing annual report.
409.4 Personal responsibility for filing of reports.
409.5 Maintenance and retention of records.
409.6 Publication of reports required by this part.

AUTHORITY: Sec. 211, 79 Stat. 888; 29 U.S.C. 441; Secretary's Order No. 3-84 (49 FR 20578).

SOURCE: 31 FR 11177, Aug. 24, 1966, unless otherwise noted.

§ 409.1 Definitions.

As used in this part, the term:

(a) "Fiscal year" means the calendar year, or other period of 12 consecutive calendar months. Once reported on one basis, a change in the reporting year shall be effected only upon prior approval by the Office of Labor-Management Standards.

(b) "Corresponding principal officers" shall include any person or persons performing or authorized to perform principal executive functions corresponding to those of president and treasurer of any surety underwriting a bond for which reports are required under section 211 of the Labor-Management Reporting and Disclosure Act of 1959.

§ 409.2 Annual report.

Each surety company having in force any bond required by section 502 of the Labor-Management Reporting and Disclosure Act of 1959 or section

412 of the Employee Retirement Income Security Act during the fiscal year, shall file with the Office of Labor-Management Standards, a report, on U.S. Department of Labor Form S-1 entitled "Surety Company Annual Report" [1] signed by the president and treasurer or corresponding principal officers, in the detail required by the instructions accompanying such form and constituting a part thereof.

[42 FR 59070, Nov. 15, 1977, as amended at 50 FR 31309, Aug. 1, 1985; 50 FR 31310, Aug. 1, 1985]

§ 409.3 Time for filing annual report.

Each surety company required to file an annual report by section 211 of the Labor-Management Reporting and Disclosure Act of 1959 and § 409.2 shall file such report within 150 days after the end of the fiscal year. The period of 150 days within which reports must be filed is stipulated in lieu of the statutory period of 90 days (sec. 207(b), 73 Stat. 529, 29 U.S.C. 437(b) as amended by 79 Stat. 888) pursuant to a finding under section 211 (79 Stat. 888) of the Act that information required to be reported cannot be practicably ascertained within 90 days of the end of the fiscal year.

[31 FR 11177, Aug. 24, 1966, as amended at 50 FR 31310, Aug. 1, 1985]

§ 409.4 Personal responsibility for filing of reports.

Each individual required to file a report under section 211 of the Labor-Management Reporting and Disclosure Act of 1959, shall be personally responsible for the filing of such reports and for the accuracy of the information contained therein.

§ 409.5 Maintenance and retention of records.

Each surety required to file any report under this part shall maintain records on the matters required to be reported which will provide in sufficient detail the necessary basic information and data from which the reports filed with the Office of Labor-Management Standards may be verified, explained or clarified and checked for accuracy and completeness, and shall keep such records available for examination for a period of not less than 5 years after the filing of the reports based on the information which they contain.

§ 409.6 Publication of reports required by this part.

Part 70 of this title shall govern inspection and examination of any report or other document filed as required by this part, and the furnishing by the Office of Labor-Management Standards of copies thereof to any person requesting them.

[35 FR 2990, Feb. 13, 1970]

PART 417—PROCEDURE FOR REMOVAL OF LOCAL LABOR ORGANIZATION OFFICERS

GENERAL

Sec.
417.1 Purpose and scope.
417.2 Definitions.

Subpart A—Procedures To Determine Adequacy of Constitution and Bylaws for Removal of Officers of Local Labor Organizations

417.3 Initiation of proceedings.
417.4 Pre-hearing conference.
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Subpart B—Procedures (1) Upon Failure of Union to Act Following Subpart A Procedures or (2) Upon Complaint of Violation of Constitution and Bylaws Pertaining To Removal of Officers of Local Labor Organizations

417.16 Initiation of proceedings.
417.17 Investigation of complaint and court action.
417.18 Hearings—removal of officers of local labor organizations.

[1] Filed as part of the original document.

Sec.
417.19 Assistant Secretary's representative.
417.20 Notice of hearing.
417.21 Transcript.
417.22 Vote among members of the labor organization.
417.23 Report to the Assistant Secretary.
417.24 Appeal to the Assistant Secretary.
417.25 Certification of results of vote.

AUTHORITY: Secs. 401, 402, 73 Stat. 533, 534; 29 U.S.C. 481, 482; Secretary's Order No. 3-84 (49 FR 20578).

SOURCE: 29 FR 8264, July 1, 1964, unless otherwise noted.

GENERAL

§ 417.1 Purpose and scope.

Section 401(h) of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 481) provides that if, upon application of any member of a local labor organization, the Secretary of Labor finds, after hearing in accordance with the Administrative Procedure Act, that the constitution and bylaws of such labor organization do not provide an adequate procedure for the removal of an elected officer guilty of serious misconduct, such officer may be removed for cause shown and after notice and hearing, by the members in good standing voting in a secret ballot. Section 401(i) (29 U.S.C. 481) requires the Secretary to promulgate rules and regulations prescribing minimum standards and procedures for determining the adequacy of the removal procedures referred to in section 401(h). Section 402(a) (29 U.S.C. 482) provides that a member of a labor organization who has exhausted the available internal remedies of such organization and of any parent body, or who has invoked such remedies without obtaining a final decision within three months, may file a complaint with the Secretary within one month thereafter alleging violation of section 401 (including violation of the constitution and bylaws of the labor organization pertaining to the removal of officers). Section 402(b) (29 U.S.C. 482) provides that upon suit initiated by the Secretary, a federal court may direct the conduct of a hearing and vote upon the removal of officers under the supervision of the Secretary, and in accordance with such rules and regulations as the Secretary may prescribe. It is the purpose of this part to implement those sections by prescribing regulations relating to the procedures and standards for determining the adequacy of removal procedures and the procedures for holding elections for the removal of officers.

§ 417.2 Definitions.

(a) "Director" means the Director, Office of Elections, Trusteeships and International Union Audits within the Office of Labor-Management Standards.

(b) "Adequate procedure" shall mean any procedure which affords reasonable and equitable opportunity for (1) trial of an officer(s) charged with serious misconduct, and (2) removal of such an officer(s) if found guilty, and which contains the elements set forth in each of the subparagraphs of this paragraph: *Provided, however,* That any other procedure which provides otherwise reasonable and equitable measures for removal from office may also be considered adequate:

(1) A reasonable opportunity is afforded for filing charges of serious misconduct against any elected officer(s) without being subject to retaliatory threats, coercion, or acts of intimidation.

(2) The charges of serious misconduct are communicated to the accused officer(s), and reasonable notice is given the members of the organization, reasonably in advance of the time for hearing thereon.

(3) Subject to reasonable restrictions, a fair and open hearing upon such charges is held after adequate notice and adequate opportunity is afforded for testimony or the submission of evidence in support of or in opposition to such charges. Within a reasonable time following such hearing, a decision is reached as to the guilt or innocence of the accused.

(4) If the hearing upon such charges is held before a trial committee or other duly authorized body, reasonable notice of such body's findings is given to the membership of the organization promptly.

(5) If such accused officer(s) is found guilty, he may be removed by a procedure which includes:

(i) A secret ballot vote of the members at an appropriately called meeting, or

(ii) A vote of a trial committee or other duly authorized body, subject to appeal and review by the members voting by a secret ballot at an appropriately called meeting.

(6) Within a reasonable time after the charges of serious misconduct are filed with the labor organization final disposition (including appellate procedures) is made of the charges.

(c) "Elected officer" means any constitutional officer, any person authorized to perform the functions of president, vice-president, secretary, treasurer, or other executive functions of a labor organization, and any member of its executive board or similar governing body.

(d) "Cause shown" means substantial evidence of serious misconduct.

(e) "Interested person" means any person or organization whose interests are or may be affected by a proceeding.

(f) "Court" means the district court of the United States in the district in which the labor organization in question maintains its principal office.

[29 FR 8264, July 1, 1964, as amended at 29 FR 8480, July 7, 1964; 29 FR 9537, July 14, 1964; 50 FR 31310, Aug. 1, 1985]

Subpart A—Procedures To Determine Adequacy of Constitution and Bylaws for Removal of Officers of Local Labor Organizations

§ 417.3 Initiation of proceedings.

(a) Any member of a local labor organization who has reason to believe that: (1) An elected officer(s) of such organization has been guilty of serious misconduct, and (2) the constitution and bylaws of his organization do not provide an adequate procedure for the removal of such officer(s), may file with the Office of Labor-Management Standards a written application, which may be in the form of a letter, for initiation of proceedings under section 401(h) of the Act.

(b) An application filed under paragraph (a) of this section shall set forth the facts upon which it is based including a statement of the basis for the charge that an elected officer(s) is guilty of serious misconduct; and shall contain: (1) Information identifying the labor organization and the officer or officers involved, and (2) any data such member desires the Office of Labor-Management Standards to consider in connection with his application.

§ 417.4 Pre-hearing conference.

(a) Upon receipt of an application filed under § 417.3, the Director shall cause an investigation to be conducted of the allegations contained therein, and if he finds probable cause to believe that the constitution and bylaws of the labor organization do not provide an adequate procedure for the removal of an elected officer(s) guilty of serious misconduct he shall: (1) Advise the labor organization of his findings and (2) afford such labor organization the opportunity for a conference to be set not earlier than 10 days thereafter except where all interested persons elect to confer at an earlier time. Any such conference shall be conducted for the purpose of hearing the views of interested persons and attempting to achieve a settlement of the issue without formal proceedings.

(b)(1) If: (i) The labor organization declines the opportunity to confer afforded under paragraph (a) of this section, and fails to undertake compliance with the provisions of section 401(h) of the Act, or if (ii) after consideration of any views presented by the labor organization the Director still finds probable cause to believe that the removal procedures are not adequate and if agreement for the adoption of adequate procedures for removal has not been achieved and the labor organization refuses to enter into a stipulation to comply with the provisions of section 401(h) of the Act, the Director shall submit his findings and recommendations to the Assistant Secretary.

(2) Upon consideration of the Director's recommendations, the Assistant Secretary may order a hearing to be

conducted before an Administrative Law Judge duly assigned by him to receive evidence and arguments (i) on the applicability of section 401(h) of the Act to the labor organization involved, and (ii) on the question of whether its constitution and bylaws provide an adequate procedure for the removal of an elected union officer guilty of serious misconduct.

[29 FR 8264, July 1, 1964, as amended at 50 FR 31310, Aug. 1, 1985]

§ 417.5 Notice.

Notice of hearing shall be given not less than 10 days before such hearing is held unless the parties agree to a shorter notice period. Such notice shall be transmitted to the labor organization and the officer(s) accused of misconduct and other interested persons, insofar as they are known, and shall inform them of:

(a) The time, place, and nature of the hearings;

(b) The legal authority and jurisdiction under which the hearing is to be held; and

(c) The matters of fact and law asserted.

The Labor organization shall inform its members of the provisions of the notice and copies of the notice shall be made available for inspection at the offices of the labor organization.

§ 417.6 Powers of Administrative Law Judge.

The designated Administrative Law Judge shall have authority:

(a) To give notice concerning and to conduct hearings;

(b) To administer oaths and affirmations;

(c) To issue subpoenas;

(d) To rule upon offers of proof and receive relevant evidence;

(e) To take or cause depositions to be taken whenever the ends of justice would be served thereby;

(f) To regulate the course of the hearing;

(g) To hold conferences for the settlement or simplification of the issues by consent of the parties;

(h) To dispose of procedural requests or other matters;

(i) To limit the number of witnesses at hearings, or limit or exclude evidence or testimony which may be irrelevant, immaterial, or cumulative;

(j) If appropriate or necessary to exclude persons or counsel from participation in hearings for refusing any proper request for information or documentary evidence, or for contumacious conduct;

(k) To grant continuances or reschedule hearings for good cause shown;

(l) To consider and decide procedural matters;

(m) To take any other actions authorized by the regulations in this part.

The Administrative Law Judge's authority in the case shall terminate upon his filing of the record and his initial decision with the Assistant Secretary, or when he shall have withdrawn from the case upon considering himself disqualified, or upon termination of his authority by the Assistant Secretary for good cause stated. However, the Administrative Law Judge's authority may be reinstated upon referral of some or all the issues by the Assistant Secretary for rehearing. This authority will terminate upon certification of the rehearing record to the Assistant Secretary.

§ 417.7 Transcript.

An official reporter shall make the only official transcript of the proceedings. Copies of the official transcript shall be made available upon request addressed to the Assistant Secretary in accordance with the provisions of 29 CFR 70.62(c).

[50 FR 31310, Aug. 1, 1985]

§ 417.8 Appearances.

The Department of Labor does not maintain a register of persons or attorneys who may participate at hearings. Any interested person may appear and be heard in person or be represented by counsel.

§ 417.9 Evidence; contumacious or disorderly conduct.

(a) Formal rules of evidence or procedure in use in courts of law or equity

shall not obtain. Rules of evidence are to be within the discretion of the Administrative Law Judge. However, it shall be the policy to exclude testimony or matter which is irrelevant, immaterial, or unduly repetitious.

(b) Contumacious or disorderly conduct at a hearing may be ground for exclusion therefrom. The refusal of a witness at any hearing to answer any questions which have been ruled to be proper shall, in the discretion of the Administrative Law Judge be ground for striking all testimony previously given by such witness on related matter.

(c) At any stage of the hearing the Administrative Law Judge may call for further evidence or testimony on any matter. After the hearing has been closed, no further information shall be received on any matter, except where provision shall have been made for it at the hearing, or except as the Administrative Law Judge or Assistant Secretary may direct by reopening the hearing.

[29 FR 8264, July 1, 1964, as amended at 29 FR 8480, July 7, 1964]

§ 417.10 Rights of participants.

Every interested person shall have the right to present oral or documentary evidence, to submit evidence in rebuttal, and to conduct such examination or cross-examination as may be required for a full and true disclosure of the facts (subject to the rulings of the Administrative Law Judge), and to object to admissions or exclusions of evidence. The Department of Labor, through its officers and attorneys shall have all rights accorded interested persons by the provisions of this Subpart A.

§ 417.11 Objections to evidence.

Objections to the admission or exclusion of evidence may be made orally or in writing, but shall be in short form, stating the grounds for such objection. The transcript shall not include argument or debate thereon except as required by the Administrative Law Judge. Rulings on such objections shall be a part of the transcript. No such objections shall be deemed waived by further participation in the hearing. Formal exceptions are unnecessary and will not be taken to rulings on objections.

§ 417.12 Proposed findings and conclusions.

Within 10 days following the close of hearings, interested persons may submit proposed findings and conclusions to the Administrative Law Judge, together with supporting reasons therefor, which shall become a part of the record.

§ 417.13 Initial decision of Administrative Law Judge.

Within 25 days following the period for submitting proposed findings and conclusions, the Administrative Law Judge shall consider the whole record, file an initial decision as to the adequacy of the constitution and bylaws for the purpose of removing officers with the Assistant Secretary, and forward a copy to each party participating in the hearing. His decision shall become a part of the record and shall include a statement of his findings and conclusions, as well as the reasons or basis therefor, upon all material issues.

§ 417.14 Form and time for filing of appeal with the Assistant Secretary.

(a) An interested person may appeal from the Administrative Law Judge's initial decision by filing written exceptions with the Assistant Secretary within 15 days of the issuance of the Administrative Law Judge's initial decision (or such additional time as the Assistant Secretary may allow), together with supporting reasons for such exceptions. Blanket appeals shall not be received. Impertinent or scandalous matter may be stricken by the Assistant Secretary, or an appeal containing such matter or lacking in specification of exceptions may be dismissed.

(b) In the absence of either an appeal to the Assistant Secretary or review of the Administrative Law Judge's initial decision by the Assistant Secretary on his own motion, such initial decision shall become the decision of the Assistant Secretary.

§ 417.15 Decision of the Assistant Secretary.

Upon appeal filed with the Assistant Secretary pursuant to § 417.14, or within his discretion upon his own motion, the complete record of the proceedings shall be certified to him; he shall notify all interested persons who participated in the proceedings; and he shall review the record, the exceptions filed and supporting reasons, and shall issue a decision as to the adequacy of the constitution and bylaws for the purpose of removing officers, or shall order such further proceedings as he deems appropriate. His decision shall become a part of the record and shall include a statement of his findings and conclusions, as well as the reasons or basis therefor, upon all material issues.

[29 FR 8264, July 1, 1964, as amended at 29 FR 8480, July 7, 1964]

Subpart B—Procedures (1) Upon Failure of Union To Act Following Subpart A Procedures or (2) Upon Complaint of Violation of Constitution and Bylaws Pertaining To Removal of Officers of Local Labor Organizations

§ 417.16 Initiation of proceedings.

Any member of a local labor organization may file a complaint with the Office of Labor-Management Standards alleging that: (a)(1) An elected Officer of such labor organization has been guilty of serious misconduct; and (2) the constitution and bylaws of the labor organization pertaining to the removal of officers have been violated, or (b) following a finding by the Assistant Secretary, that such removal provisions are inadequate, or a stipulation of compliance with the provisions of section 401(h) of the Act reached with the Director in connection with a prior charge of the inadequacy of a union's constitution and bylaws to remove officers, as provided in Subpart A of this part, the labor organization (1) has failed to act within a reasonable time, or (2) has violated the procedures agreed to with the Director, or (3) has violated the principles governing adequate removal procedures under § 417.2(e). The complaint must be filed pursuant to section 402(a) of the Act within one calendar month after one of the two following conditions has been met: (1) The member has exhausted the remedies available to him under the constitution and bylaws of the organization, or (2) the member has invoked such remedies without obtaining a final decision within three calendar months after invoking them.

[29 FR 8264, July 1, 1964, as amended at 29 FR 8480, July 7, 1964]

§ 417.17 Investigation of complaint and court action.

The Office of Labor-Management Standards shall investigate such complaint, and if upon such investigation the Secretary finds probable cause to believe that a violation of Title IV of the Act has occurred and has not been remedied, the Secretary shall within 60 days after the filing of such complaint, bring a civil action against the labor organization in the district court of the United States for the district in which such labor organization maintains its principal office, to direct the conduct of a hearing and vote upon the removal of officer(s) under the supervision of the Assistant Secretary as provided in section 402(b) of the Act.

§ 417.18 Hearings—removal of officers of local labor organizations.

Hearings pursuant to order of the court and concerning the removal of officers under section 402(b) of the Act shall be for the purpose of introducing testimony and evidence showing why an officer or officers accused of serious misconduct should or should not be removed. Hearings shall be conducted by the officers of the labor organization (subject to § 417.19) in accordance with the constitution and bylaws of the labor organization insofar as they are not inconsistent with Title IV of the Act, or with the provisions of this Part 417: *Provided, however,* That no officer(s) accused of serious misconduct shall participate in such hearings in any capacity except as witness or counsel.

§ 417.19 Assistant Secretary's representative.

The Assistant Secretary shall appoint a representative or representatives whose functions shall be to supervise the hearing and vote. Such representative(s) shall have final authority to issue such rulings as shall be appropriate or necessary to insure a full and fair hearing and vote. Upon his own motion or upon consideration of the petition of any interested person the Assistant Secretary's Representative may disqualify any officer(s) or member(s) of the union from participation in the conduct of the hearing (except in the capacity of witness or counsel).

[29 FR 8264, July 1, 1964, as amended at 29 FR 8480, July 7, 1964]

§ 417.20 Notice of hearing.

Notice of hearing, not less than 10 days in advance of the date set for such hearing, shall be transmitted to the officer or officers accused of serious misconduct and other interested persons, insofar as they are known, and shall inform them of (a) the time, place, and nature of the hearing; (b) the legal authority and jurisdiction under which the hearing is to be held; (c) the matters of fact and law asserted; and (d) their rights to challenge the appointment of certain of, or all of, the officers of the union to conduct the hearing in accordance with this subpart. The labor organization shall promptly inform its members of the provisions of the notice. Copies of the notice shall be made available for inspection at the office of the labor organization.

§ 417.21 Transcript.

It shall be within the discretion of the Assistant Secretary to require an official reporter to make an official transcript of the hearings. In the event he does so require, copies of the official transcript shall be made available upon request addressed to the Assistant Secretary in accordance with the provisions of 29 CFR 70.62(c).

[50 FR 31310, Aug. 1, 1985]

§ 417.22 Vote among members of the labor organizations.

Within a reasonable time after completion of the hearing, and after proper notice thereof, a secret ballot vote shall be conducted among the members of the labor organization in good standing on the issue of whether the accused officer or officers shall be removed from office. The vote shall be in accordance with the constitution and bylaws of the labor organization insofar as they are not inconsistent with the provisions of the Act or this Part 417. The presiding officer or officers at the taking of such vote shall entertain objections or suggestions as to the rules for conducting the vote, eligibility of voters, and such other matters as may be pertinent; and shall rule on such questions, shall establish procedures for the conduct of the vote, and for tabulation of the ballots; and shall appoint observers and compile a list of eligible voters. All rulings of the presiding officer or officers shall be subject to the provisions of § 417.19.

§ 417.23 Report to the Assistant Secretary.

Following completion of the hearing and vote, the Assistant Secretary's Representative shall file a report with the Assistant Secretary setting out the results of the balloting; and pertinent details of the hearing and vote. Notice thereof shall be given to the membership of such labor organization promptly and copies shall be furnished to all interested parties.

§ 417.24 Appeal to the Assistant Secretary.

(a) Within 15 days after mailing of the report of the Assistant Secretary's Representative, any interested party may appeal the conduct of the hearing or vote or both by filing written exceptions with the Assistant Secretary. Blanket appeals shall not be received. Impertinent or scandalous matter may be stricken by the Assistant Secretary, or an appeal containing such matter or lacking in specifications may be dismissed.

(b) Upon review of the whole record, the Assistant Secretary shall issue a decision or may order further hearing,

a new vote, or such further proceedings as he deems appropriate.

[29 FR 8264, July 1, 1964, as amended at 50 FR 31310, Aug. 1, 1985]

§ 417.25 Certification of results of vote.

Upon receipt of the report of the Assistant Secretary's Representative on the hearing and vote on removal, the Assistant Secretary shall certify the results of the vote to the court as required by section 402(c) of the Act.

PART 451—LABOR ORGANIZATIONS AS DEFINED IN THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959

Sec.
451.1 Introductory statement.
451.2 General.
451.3 Requirements of section 3(i).
451.4 Labor organizations under section 3(j).
451.5 "State or local central body."
451.6 Extraterritorial application.

AUTHORITY: Secs. 3, 208, 401, 78 Stat. 520, 529, 532, 29 U.S.C. 402, 438, 481; Secretary's Order No. 3-84 (49 FR 20578).

SOURCE: 28 FR 14388, Dec. 27, 1963, unless otherwise noted.

§ 451.1 Introductory statement.

(a) This part discusses the meaning and scope of sections 3(i) and 3(j) of the Labor-Management Reporting and Disclosure Act of 1959 [1] (hereinafter referred to as the Act). These provisions define the terms "labor organization" and "labor organization * * * in an industry affecting commerce" for purposes of the Act.[2]

(b) The Act imposes on labor organizations various obligations and prohibitions relating generally, among other things, to the reporting of information and election and removal of officers. Requirements are also imposed on the officers, representatives, and employees of labor organizations. In addition, certain rights are guaranteed the members thereof. It thus becomes a matter of importance to determine what organizations are included within the applicability of the Act.

(c) The provisions of the Act, other than Title I and amendments to other statutes contained in section 505 and Title VII, are subject to the general investigatory authority of the Secretary of Labor embodied in section 601 [3] (and delegated by him to the Assistant Secretary) which empowers him to investigate whenever he believes it necessary in order to determine whether any person has violated or is about to violate such provisions. The correctness of an interpretation of these provisions can be determined finally and authoritatively only by the courts. It is necessary, however, for the Assistant Secretary to reach informed conclusions as to the meaning of the law to enable him to carry out his statutory duties of administration and enforcement. The interpretations of the Assistant Secretary contained in this part, which are issued upon the advice of the Solicitor of Labor, indicate the construction of the law which will guide him in performing his duties unless and until he is directed otherwise by authoritative rulings of the courts or unless and until he subsequently decides that a prior interpretation is incorrect. However, the omission to discuss a particular problem in this part, or in interpretations supplementing it, should not be taken to indicate the adoption of any position by the Assistant Secretary with respect to such problem or to constitute an administrative interpretation or practice. Interpretations of the Assistant Secretary with respect to the meaning of the terms "labor organization" and "labor organization * * * in an industry affecting commerce," as used in

[1] 73 Stat. 520, 521, 29 U.S.C. 402.

[2] It should be noted that the definition of the term "labor organization," as well as other terms, in section 3 are for purposes of those portions of the Act included in Titles I, II, III, IV, V (except section 505) and VI. They do not apply to Title VII, which contains amendments of the National Labor Relations Act, as amended, nor to section 505 of Title V, which amends section 302 (a), (b), and (c) of the Labor Management Relations Act, 1947, as amended. The terms used in Title VII and section 505 of Title V have the same meaning as they have under the National Labor Relations Act, as amended, and the Labor Management Relations Act, 1947, as amended.

[3] Sec. 601, 73 Stat. 539, 29 U.S.C. 521.

the Act, are set forth in this part to provide those affected by the provisions of the Act with "a practical guide * * * as to how the office representing the public interest in its enforcement will seek to apply it." [4]

(d) To the extent that prior opinions and interpretations relating to the meaning of "labor organization" and "labor organization * * * in an industry affecting commerce" are inconsistent or in conflict with the principles stated in this part, they are hereby rescinded and withdrawn.

[28 FR 14388, Dec. 27, 1963, as amended at 50 FR 31309, Aug. 1, 1985]

§ 451.2 General.

A "labor organization" under the Act must qualify under section 3(i). It must also be engaged in an industry affecting commerce. In accordance with the broad language used and the manifest congressional intent, the language will be construed broadly to include all labor organizations of any kind other than those clearly shown to be outside the scope of the Act.

§ 451.3 Requirements of section 3(i).

(a) *Organizations which deal with employers.* (1) The term "labor organization" includes "any organization of any kind, any agency, or employee representation committee, group, association, or plan * * * in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, * * *." The quoted language is deemed sufficiently broad to encompass any labor organization irrespective of size or formal attributes. While it is necessary for employees to participate therein, such participating employees need not necessarily be the employees of the employer with whom the organization deals. In determining who are "employees" for purposes of this provision, resort must be had to the broad definition of "employee" contained in section 3(f) of the Act.[5] It will be noted that the term includes employees whose work has ceased for certain specified reasons, including any current labor dispute.

(2) To come within the quoted language in section 3(i) the organization must exist for the purpose, in whole or in part, of dealing with employers concerning grievances, etc. In determining whether a given organization exists wholly or partially for such purpose, consideration will be given not only to formal documents, such as its constitution or bylaws, but the actual functions and practices of the organization as well. Thus, employee committees which regularly meet with management to discuss problems of mutual interest and handle grievances are "labor organizations", even though they have no formal organizational structure.[6]

(3) Since the types of labor organizations described in subparagraph (2) of this paragraph are those which deal with employers, it is necessary to consider the definition of "employer" contained in section 3(e) of the Act in determining the scope of the language under consideration.[7] The term "em-

[4] Skidmore v. Swift & Co., 323 U.S. 134, 138.

[5] Sec. 3(f) reads: " 'Employee' means any individual employed by an employer, and includes any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice or because of exclusion or expulsion from a labor organization in any manner or for any reason inconsistent with the requirements of this Act."

[6] National Labor Relations Board v. Cabot Carbon Co., 360 U.S. 203.

[7] Sec. 3(e) reads: " 'Employer' means any employer or any group or association of employers engaged in an industry affecting commerce, (1) which is, with respect to employees engaged in an industry affecting commerce, an employer within the meaning of any law of the United States relating to the employment of any employees or (2) which may deal with any labor organization concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and includes any person acting directly or indirectly as an employer or as an agent of an employer in relation to an employee but does not include the United States or any corporation wholly owned by the Government of the United States or any State or political subdivision thereof."

ployer" is broadly defined to include "any employer or any group or association of employers engaged in an industry affecting commerce" which is "an employer within the meaning of any law of the United States relating to the employment of any employees * * *." Such laws would include, among others, the Railway Labor Act, as amended, the Fair Labor Standards Act, as amended, the Labor Management Relations Act, as amended, and the Internal Revenue Code. The fact that employers may be excluded from the application of any of the foregoing acts would not preclude their qualification as employers for purposes of this Act. For example, employers of agricultural labor who are excluded from the application of the Labor Management Relations Act, as amended, would appear to be employers within the meaning of this Act.

(4) In defining "employer," section 3(e) expressly excludes the "United States or any corporation wholly owned by the Government of the United States or any State or political subdivision thereof." The term "political subdivision" includes, among others, counties and municipal governments. A labor organization composed entirely of employees of the governmental entities excluded by section 3(e) would not be a labor organization for the purposes of the Act with the exception of a labor organization composed of employees of the United States Postal Service which is subject to the Act by virtue of the Postal Reorganization Act of 1970. (Organizations composed of Federal government employees that meet the definition of "labor organization" in the Civil Service Reform Act or the Foreign Service Act are subject to the standards of conduct requirements of those Acts, 5 U.S.C. 7120 and 22 U.S.C. 4117, respectively. The regulations implementing the standards of conduct requirements are contained in Parts 457-459 of this title.) However, in the case of a national, international or intermediate labor organization composed both of government locals and non-government or mixed locals, the parent organization as well as its mixed and non-government locals would be "labor organizations" and subject to the Act. In such case, the locals which are composed entirely of government employees would not be subject to the Act, although elections in which they participate for national officers or delegates would be so subject.[8]

(b) *Organizations which may or may not deal with employers.* Regardless of whether it deals with employers concerning terms and conditions of employment and regardless of whether it is composed of employees, any conference, general committee, joint or system board, or joint council engaged in an industry affecting commerce and which is subordinate to a national or international labor organization is a "labor organization" for purposes of the Act. Included are the area conferences and the joint councils of the International Brotherhood of Teamsters and similar units of other national and international labor organizations.

[28 FR 14388, Dec. 27, 1963, as amended at 42 FR 59071, Nov. 15, 1977; 50 FR 31310, Aug. 1, 1985]

§ 451.4 Labor organizations under section 3(j).

(a) *General.* Section 3(j) sets forth five categories of labor organizations which "shall be deemed to be engaged in an industry affecting commerce" within the meaning of the Act. Any organization which qualifies under section 3(i) and falls within any one of these categories listed in section 3(j) is subject to the requirements of the Act.

(b) *Certified employee representatives.* This category includes all organizations certified as employee representatives under the Railway Labor Act, as amended, or under the National Labor Relations Act, as amended.

(c) *Labor organizations recognized or acting as employee representatives though not certified.* This category includes local, national, or international labor organizations which, though not formally certified, are recognized or acting as the representatives of employees of an employer engaged in an industry affecting commerce. Federations, such as the American Federa-

[8] See also, § 452.12 of this chapter which discusses the election provisions of the Act.

tion of Labor and Congress of Industrial Organizations, are included in this category,[9] although expressly excepted from the election provisions of the Act.[10]

(d) *Organizations which have chartered local or subsidiary bodies.* This category includes any labor organization that has chartered a local labor organization or subsidiary body which is within either of the categories discussed in paragraph (b) or (c) of this section. Under this provision, a labor organization not otherwise subject to the Act, such as one composed of Government employees, would appear to be "engaged in an industry affecting commerce" and, therefore, subject to the Act if it charters one or more local labor organizations which deal with an "employer" as defined in section 3(c).[11] This category includes, among others, a federation of national or international organizations which directly charters local bodies.[12]

(e) *Local or subordinate bodies which have been chartered by a labor organization.* This category includes any labor organization that has been chartered by an organization within either of the categories discussed in paragraph (b) or (c) of this section as the local or subordinate body through which such employees may enjoy membership or become affiliated with the chartering organization.

(f) *Intermediate bodies.* Included in this category is any conference, general committee, joint or system board, or joint council, subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the categories discussed in paragraphs (b), (c), (d) and (e) of this section. Excluded from this definition, however, are State or local central bodies.[13] (It should be noted that the above listing is included in the Act as words of illustration, not of limitation.) The following is a description of typical intermediate bodies:

(1) *Conference.* A conference is an organic body within a national or international labor organization formed on a geographical area, trade division, employer-wide or similar basis and composed of affiliate locals of the parent national or international organization. The various conferences of the International Brotherhood of Teamsters, for example, are in this category.

(2) *General committees.* Typical of those bodies are the general committees of the railroad labor organizations. The term includes any subordinate unit of a national railroad labor organization, regardless of the title or designation of such unit, which under the constitution and bylaws of the organization of which it is a unit, is authorized to represent that organization on a particular railroad or portion thereof in negotiating with respect to wages and working conditions.[14] General committees are sometimes known as system boards of adjustment, general grievance committees, and general committees of adjustment. They are to be distinguished from system boards of adjustment established under the Railway Labor Act, which are composed of management and labor members. These joint labor-management boards are not included within the definition of a labor organization under the Act.

(3) *Joint or system boards.* As mentioned above, in connection with railroad labor organizations the term "general committee" includes system boards. However, as used here the term has a broader meaning and includes, among others, boards which have members from more than one labor organization.

(4) *Joint councils.* A joint council is composed of locals not necessarily of the same national or international labor organization located in a particular area, such as a city or county.

[9] See National Labor Relations Board v. Highland Park Mfg. Co., 341 U.S. 322. See also paragraph (d) of this section.

[10] Act, sec. 401(a).

[11] See § 451.3(a).

[12] See also paragraph (c) of this section.

[13] For discussion of State and local central bodies see § 451.5.

[14] See definition of term "General Committee" under Railroad Retirement Act in 20 CFR 201.1(k).

These bodies are sometimes called joint boards, joint executive boards, joint councils, or district councils. Included, for example, are councils of building and construction trades labor organizations.

[28 FR 14388, Dec. 27, 1963, as amended at 42 FR 59071, Nov. 15, 1977]

§ 451.5 "State or local central body."

(a) The definition of "labor organization" in section 3(i) and the examples of labor organizations deemed to be engaged in an industry affecting commerce in section 3(j)(5) both except from the term "labor organization" a "State or local central body." As used in these two sections, the phrase "State or local central body" means an organization that:

(1) Is chartered by a federation of national or international unions; and

(2) Admits to membership local unions and subordinate bodies of national or international unions that are affiliated with the chartering federation within the State or local central body's territory and any local unions or subordinate bodies directly affiliated with the federation in such territory; and

(3) Exists primarily to carry on educational, legislative and coordinating activities.

(b) The term does not include organizations of local unions or subordinate bodies (1) of a single national or international union; or (2) of a particular department of a federation or similar association of national or international unions.

[29 FR 8060, June 25, 1964]

§ 451.6 Extraterritorial application.

(a) It is not the purpose of the Act to impose on foreign labor organizations any regulation of the activities they carry on under the laws of the countries in which they are domiciled or have their principal place of business. The applicability of the Act is limited to the activities of persons or organizations within the territorial jurisdiction of the United States. The foregoing would be applicable, for example, to Canadian locals affiliated with international labor organizations organized within the United States.

(b) On the other hand, labor organizations otherwise subject to the Act are not relieved of the requirements imposed upon them with respect to actions taken by them in the United States or which will have effect in the United States, by virtue of the fact that they have foreign members or affiliates that participate in these actions. For example, a national or international labor organization which conducts its required election of officers by referendum or at a convention of delegates must comply with the election provisions of the Act,[16] even though members of foreign locals participate in the balloting, or delegates of foreign locals participate in the election at the convention.

(c) Similarly, the provisions of the Act with respect to imposition of trusteeships[17] are applicable to United States national or international labor organizations subject to this Act even though the action of the United States organization is taken with respect to a foreign local.

PART 452—GENERAL STATEMENT CONCERNING THE ELECTION PROVISIONS OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959

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AUTHORITY: Secs. 401, 402, 73 Stat. 532, 534; 29 U.S.C. 481, 482; Secretary's Order No. 3-84 (49 FR 20578).

SOURCE: 38 FR 18324, July 9, 1973, unless otherwise noted.

Subpart A—General Considerations

§ 452.1 Introductory statement.

(a) This part discusses the meaning and scope of the provisions of Title IV of the Labor-Management Reporting and Disclosure Act [1] (hereinafter referred to as the Act), which deal with the election of officers of labor organizations. These provisions require periodic election of union officers, and prescribe minimum standards to insure that such elections will be fairly conducted. Specific provisions are included to assure the right of union members to participate in selecting their officers without fear of interference or reprisal, and to protect the right to nominate candidates, run for office, and vote in officer elections. Title IV also sets forth the rights of candidates, provides for secret ballots in appropriate cases, and requires notice of nominations and elections, preservation of election records, and other safeguards to insure fair elections. However, the Act does not prescribe complete, detailed procedures for the nomination and election of union officers.

(b) Interpretations of the Assistant Secretary with respect to the election provisions of Title IV are set forth in this part to provide those affected by these provisions of the Act with "a practical guide * * * as to how the office representing the public interest in its enforcement will seek to apply it." [2] The correctness of an interpretation can be determined finally and authoritatively only by the courts. It is necessary, however, for the Assistant Secretary to reach informed conclusions as to the meaning of the law to enable him to carry out his statutory duties of administration and enforcement. The interpretations of the Assistant Secretary contained in this part, which are issued upon the advice of the Solicitor of Labor, indicate the construction of the law which will guide him in performing his duties unless and until he is directed otherwise by authoritative rulings of the

[1] 73 Stat. 532-535, 29 U.S.C. 481-483.

[2] Skidmore v. Swift & Co., 323 U.S. 134 at 138 (1944).

courts or unless and until he subsequently announces that a prior interpretation is incorrect. However, the fact that a particular problem is not discussed in this part, or in interpretations supplementing it, should not be taken to indicate the adoption of any position by the Assistant Secretary with respect to such problem or to constitute an administrative interpretation or practice.

(c) To the extent that prior opinions and interpretations relating to the election of officers of labor organizations under the Act are inconsistent or in conflict with the principles stated in this part, they are hereby rescinded and withdrawn.

§ 452.2 Application of union constitution and bylaws.

Elections required to be held as provided in the title are to be conducted in accordance with the validly adopted constitution and bylaws of the labor organizations insofar as they are not inconsistent with the provisions of the Act.

§ 452.3 Interpretations of constitution and bylaws.

The interpretation consistently placed on a union's constitution by the responsible union official or governing body will be accepted unless the interpretation is clearly unreasonable. [3]

§ 452.4 Investigatory provision—application.

The provisions of section 601 of the Act provide general investigatory authority to investigate alleged violations of the Act including violations of Title IV. However, section 601 in and of itself provides no remedy, and the section must be read in conjunction with the remedy and statutory scheme of section 402, i.e., exhaustion of internal union remedies and a complaint to the Secretary following completion of the election before suit can be filed. In view of the remedy provided, an investigation prior to completion of an election may have the effect of publicizing the activities or unsubstantiated allegations of one faction to the prejudice of the opposition. To avoid this result, and as a matter of sound statutory construction, the Department will exercise its investigatory authority only in circumstances in which the outcome of the election could not be affected by the investigation. [4] Thus, the Department ordinarily will employ its investigatory authority only where the procedural requirements for a Title IV investigation have been met; but in unusual circumstances or where necessary to collect or preserve evidence an investigation may be conducted after the conclusion of balloting.

§ 452.5 Effect of violation on outcome.

Since the remedy under section 402 is contingent upon a finding by the court, among other things, that the violation "may have affected the outcome of an election" [5] the Secretary as a matter of policy will not file suit to enforce the election provisions unless the violations found are such that the outcome may have been affected. [6]

[38 FR 18324, July 9, 1973, as amended at 50 FR 31310, Aug. 1, 1985]

§ 452.6 Delegation of enforcement authority.

The authority of the Secretary under the Act has been delegated in part to the Assistant Secretary.

[38 FR 18324, July 9, 1973, as amended at 50 FR 31309, Aug. 1, 1985]

Subpart B—Other Provisions of the Act Affecting Title IV

§ 452.7 Bill of Rights, Title I.

The provisions of Title I, "Bill of Rights of Members of Labor Organizations" [7] (particularly section 101(a)(1)

[3] English v. Cunningham, 282 F.2d 848 (C.A.D.C. 1960).

[4] However questions involving the use of force or violence or the threat of the use of force or violence under circumstances which may violate section 610 (29 U.S.C. 530) of the Act will be referred promptly to the Department of Justice for appropriate action.

[5] Act, sec. 402(b) (29 U.S.C. 482).

[6] *Dunlop* v. *Bachowski*, 421 U.S. 560, 570 (1975), citing *Wirtz* v. *Glass Bottle Blowers*, 389 U.S. 463, 472 (1968) and *Schonfeld* v. *Wirtz*, 285 F. Supp. 705, 707-708 (1966).

[7] 73 Stat. 522, 29 U.S.C. 411.

"Equal Rights," section 101(a)(2) "Freedom of Speech and Assembly," and section 101(a)(5) "Safeguards against Improper Disciplinary Action") are related to the rights pertaining to elections. Direct enforcement of Title I rights, as such, is limited to civil suit in a district court of the United States by the person whose rights have been infringed. [8] The exercise of particular rights of members is subject to reasonable rules and regulations in the labor organization's constitution and bylaws. [9]

§ 452.8 Trusteeship provisions, Title III.

Placing a labor organization under trusteeship consistent with Title III, may have the effect of suspending the application of Title IV to the trusteed organization (see § 452.15).

§ 452.9 Prohibition against certain persons holding office; Section 504.

Among the safeguards for labor organizations provided in Title V is a prohibition against the holding of office by certain classes of persons. [10] This provision makes it a crime for any person willfully to serve in certain positions, including as an elected officer of a labor organization, for a period of three to thirteen years after conviction or imprisonment for the commission of specified offenses, including violation of Titles II or III of the Act, or conspiracy or attempt to commit such offenses. It is likewise a crime for any labor organization or officer knowingly to permit such a person to serve in such positions. Persons subject to the prohibition applicable to convicted criminals may serve if their citizenship rights have been fully restored after being taken away by reason of the conviction, or if, following the procedures set forth in the Act, it is determined that their service would not be contrary to the purposes of the Act.

[50 FR 31310, Aug. 1, 1985]

§ 452.10 Retaliation for exercising rights.

Section 609, which prohibits labor organizations or their officials from disciplining members for exercising their rights under the Act, and section 610, which makes it a crime for any person to use or threaten force or violence for the purpose of interfering with or preventing the exercise of any rights protected under the Act, apply to rights relating to the election of officers under Title IV.

Subpart C—Coverage of Election Provisions

§ 452.11 Organizations to which election provisions apply.

Title IV of the Act contains election provisions applicable to national and international labor organizations, except federations of such organizations, to intermediate bodies such as general committees, conferences, system boards, joint boards, or joint councils, certain districts, district councils and similar organizations and to local labor organizations. [11] The provisions do not apply to State and local central bodies, which are explicitly excluded from the definition of "labor organization". [12] The characterization of a particular organizational unit as a "local," "intermediate," etc., is determined by its functions and purposes rather than the formal title by which it is known or how it classifies itself.

§ 452.12 Organizations comprised of government employees.

An organization composed entirely of government employees (other than employees of the United States Postal Service) is not subject to the election provisions of the Act. Section 3(e) of the Act, defining the term "employer," specifically excludes the United States

[8] But the Secretary may bring suit to enforce section 104 (29 U.S.C. 414).

[9] Act, sec. 101(a)(1), 101(a)(2), and 101(b) (29 U.S.C. 411).

[10] Act, sec. 504(a) (29 U.S.C. 504), as amended by the Comprehensive Crime Control Act of 1984, Pub. L. 98-473, secs. 229, 235, 803 and 804. See text at footnote 23 for a list of the disabling crimes.

[11] For the scope of the term "labor organization," see Part 451 of this chapter.

[12] See § 451.5 of this chapter for a definition of "State or local central body."

Government, its wholly owned corporations, and the States and their political subdivisions from the scope of that term, and section 3(f) defines an "employee" as an individual employed by an "employer." Since a "labor organization" is defined in section 3(i) as one in which "employees" participate and which exists in whole or in part for the purpose of "dealing with employers," an organization composed entirely of government employees would not be a "labor organization" [13] as that term is defined in the Act. However, section 1209 of the Postal Reorganization Act provides that organizations of employees of the United States Postal Service shall be subject to the Labor-Management Reporting and Disclosure Act. A national, international or intermediate labor organization which has some locals of government employees not covered by the Act and other locals which are mixed or are composed entirely of employees covered by the Act would be subject to the election requirements of the Act. Its mixed locals would also be subject to the Act. The requirements would not apply to locals composed entirely of government employees not covered by the Act, except with respect to the election of officers of a parent organization which is subject to those requirements or the election of delegates to a convention of such parent organization, or to an intermediate body to which the requirements apply.

[38 FR 18324, July 9, 1973, as amended at 50 FR 31311, Aug. 1, 1985]

§ 452.13 Extraterritorial application.

Although the application of the Act is limited to the activities of persons and organizations within the territorial jurisdiction of the United States, [14] an international, national or intermediate body is not exempted from the requirements of the Act by virtue of the participation of its foreign locals or foreign membership in its elections. For example, votes received from Canadian members in referendum elections held by an international must have been cast under procedures meeting the minimum requirements of the Act, and Canadian delegates participating at conventions of the international at which officers are elected must have been elected by secret ballot.

§ 452.14 Newly formed or merged labor organizations.

The initial selection of officers by newly formed or merged labor organizations is not subject to the requirements of Title IV. [15] Such labor organizations may have temporary or provisional officers serve until a regular election subject to the Act can be scheduled. An election under all the safeguards prescribed in these regulations must be held within a reasonable period after the organization begins to function. What would be a reasonable time for this purpose depends on the circumstances, but after the formation or consolidation of the labor organization, a regular election subject to Title IV may not be deferred longer than the statutory period provided for that type of organization. However, when a pre-existing labor organization changes its affiliation without substantially altering its basic structure or identity the terms of its officers may not be extended beyond the maximum period specified by the Act for the type of labor organization involved.

§ 452.15 Effect of trusteeship.

Establishment of a valid trusteeship may have the effect of suspending the operation of the election provisions of the Act. When the autonomy otherwise available to a subordinate labor organization has been suspended consistent with the provisions of Title III of the Act, officers of the organization under trusteeship may be relieved of their duties and temporary officers ap-

[13] Most labor organizations composed of Federal Government employees are subject to the standards of conduct provisions of the Civil Service Reform Act, 5 U.S.C. 7120, or the Foreign Service Act, 22 U.S.C. 4117. The regulations implementing those statutory provisions are contained in Parts 457-459 of this title.

[14] See § 451.6 of this chapter.

[15] However, the other provisions of the Act are applicable immediately upon such formation or merger.

pointed by the trustee if necessary to assist him in carrying out the purposes for which the trusteeship was established. However, when a regular election of officers or an election for purposes of terminating the trusteeship is being held during the trusteeship, Title IV would apply.

§ 452.16 Offices which must be filled by election.

Section 401 of the Act identifies the types of labor organizations whose officers must be elected and prescribes minimum standards and procedures for the conduct of such elections. Under that section officers of national or international labor organizations (except federations of such organizations), local labor organizations, and intermediate bodies such as general committees, system boards, joint boards, joint councils, conferences, certain districts, district councils and similar organizations must be elected. [16]

§ 452.17 Officer.

Section 3(n) of the Act defines the word "officer" and it is this definition which must be used as a guide in determining what particular positions in a labor organization are to be filled in the manner prescribed in the Act. For purposes of the Act, "officer" means "any constitutional officer, any person authorized to perform the functions of president, vice president, secretary, treasurer, or other executive functions of a labor organization, and any member of its executive board or similar governing body."

§ 452.18 Constitutional officers.

A constitutional officer refers to a person holding a position identified as an officer by the constitution and bylaws of the labor organization. Thus, for example, a legislative representative of a labor organization who performs no executive functions and whose duties are confined to promoting the interests of members in legislative matters is nevertheless an officer who is required to be elected where the labor organization's constitution identifies the holder of such a position as an officer. On the other hand, legislative representatives who are required to be elected by the constitution and bylaws of a labor organization are not considered to be officers within the meaning of the Act if they are not designated as such by the constitution, are not members of any executive board or similar governing body, and do not perform executive functions. As defined in the Act, however, the term "officer" is not limited to individuals in positions identified as such or provided for in the constitution or other organic law of the labor organization. [17] The post of Honorary President, President Emeritus or Past President that is to be assumed by the retiring chief executive officer of a union would not be an officer position unless it is designated as an officer position by the union's constitution, or the holder of the position performs executive functions or serves on an executive board or similar governing body.

§ 452.19 Executive functions.

The definitional phrase "a person authorized to perform the functions of president, vice president, secretary, treasurer, or other executive functions of a labor organization" brings within the term "officer" any person who in fact has executive or policy-making authority or responsibility, although he may not occupy a position identified as an officer under the constitution and bylaws of the organization. Authorization to perform such functions need not be contained in any provision of the constitution or bylaws or other document but may be inferred from actual practices or conduct. On the other hand, a person is not an officer merely because he performs ministerial acts for a designated officer who alone has responsibility. The normal functions performed by business agents and shop stewards,

[16] See § 452.23 for a discussion of the frequency with which the different types of labor organizations must conduct elections of officers. See Part 451 of this chapter for the scope of the term "labor organization."

[17] Cf. NLRB v. Coca-Cola Bottling Co., 350 U.S. 264 (1956). See also, Daily Cong. Rec. 5867, Sen., Apr. 23, 1959.

such as soliciting memberships, presenting or negotiating employee grievances within the work place, and negotiating contracts are not "other executive functions" as that phrase is used in section 3(n) of the Act. However, a directing business representative or a business manager usually exercises such a degree of executive authority as to be considered an officer and, therefore, must be elected. The duties normally pertaining to membership on a bargaining committee do not come within the phrase "other executive functions." However, persons occupying such non-executive positions may be "officers" if they are ex officio members of the organization's executive board (or similar governing body) or if the constitution or bylaws of the union designate such positions as officers.

§ 452.20 Nature of executive functions.

(a) The functions that will bring a particular position with a title other than president, vice-president, secretary-treasurer, or executive board member within the definition of "officer" cannot be precisely defined. They are the functions typically performed by officers holding these titles in current labor union practice. Decisions in each case will require a practical judgment. As a general rule, a person will be regarded as being authorized to perform the functions of president if he is the chief or principal executive officer of the labor organization. Similarly, he will be regarded as being authorized to perform the functions of treasurer if he has principal responsibility for control and management of the organization's funds and fiscal operation. A member of any group, committee, or board which is vested with broad governing or policymaking authority will be regarded as a member of an "executive board or similar governing body." The name or title that the labor organization assigns to the position is not controlling.

(b) The purpose of the election requirement of the Act is to assure that persons in positions of control in labor organizations will be responsive to the desires of the members.[18] Professional and other staff members of the labor organization who do not determine the organization's policies or carry on its executive functions and who are employed merely to implement policy decisions and managerial directives established by the governing officials of the organization are not officers and are not required to be elected.

§ 452.21 Members of executive board.

The phrase "a member of its executive board or similar governing body" refers to a member of a unit identified as an executive board or a body, whatever its title, which is vested with functions normally performed by an executive board. Members of a committee which is actually the executive board or similar governing body of the union are considered officers within the meaning of section 3(n) of the Act even if they are not so designated by the union's constitution and bylaws. For example, members of an "Executive-Grievance Committee" which exercises real governing powers are officers under the Act. However, it should be noted that committee membership alone will not ordinarily be regarded as an indication of officer status, unless the committee or its members meet the requirements contained in section 3(n) of the Act.

§ 452.22 Delegates to a convention.

Under certain circumstances, delegates to a convention of a national or international labor organization, or to an intermediate body, must be elected by secret ballot among the members in good standing of the labor organization they represent even though such delegates are not "officers" of the organization. Such election is required by the Act[19] when the delegates are to nominate or elect officers of a national or international labor organization, or of an intermediate body. There is, of course, no requirement that delegates be elected in accordance with the provisions of Title IV if they

[18] See, for example, S. Rept. 187, 86th Cong., 1st sess., p. 7.

[19] Act, sec. 401(a) and 401(d) (29 U.S.C. 481).

do not nominate or elect officers, unless delegates are designated as "officers" in the union's constitution and bylaws or unless, by virtue of their position, they serve as members of the executive board or similar governing body of the union.

Subpart D—Frequency and Kinds of Elections

§ 452.23 Frequency of elections.

The Act requires that all national and international labor organizations (other than federations of such labor organizations) elect their officers not less often than every five years. Officers of intermediate bodies, such as general committees, system boards, joint boards, joint councils, conferences, and certain districts, district councils and similar organizations, must be elected at least every four years, and officers of local labor organizations not less often than every three years.

§ 452.24 Terms of office.

The prescribed maximum period of three, four, or five years is measured from the date of the last election.[20] It would not be consistent with these provisions of the Act for officers elected for the maximum terms allowable under the statute to remain in office after the expiration of their terms without a new election. Failure to hold an election for any office after the statutory period has expired constitutes a continuing violation of the Act, which may be brought to the attention of the Secretary in the form of a complaint filed in accordance with the appropriate procedure. Title IV establishes only maximum time intervals between elections for officers. Labor organizations covered by these provisions may hold elections of officers with greater frequency than the specified maximum period. For example, a local labor organization is required to hold an election of officers at least once every three years, but it must hold an election every year if its governing rules so provide. It should be noted, moreover, that the provisions of Title IV apply to all regular elections of officers in labor organizations subject to the Act. Thus, if a labor organization chooses to hold elections of officers more frequently than the statutory maximum intervals, it must observe the minimum standards set forth in Title IV for the conduct of such elections.

§ 452.25 Vacancies in office.

Title IV governs the regular periodic elections of officers in labor organizations subject to the Act. No requirements are imposed with respect to the filling by election or other method of any particular office which may become vacant between such regular elections. If, for example, a vacancy in office occurs in a local labor organization, it may be filled by appointment, by automatic succession, or by a special election which need not conform to the provisions of Title IV. The provisions of section 504 of the Act, which prohibit certain persons from holding office, are applicable to such situations. While the enforcement procedures of section 402 are not available to a member in connection with the filling of an interim vacancy, remedies may be available to an aggrieved member under section 102 of the Act or under any pertinent State or local law.

§ 452.26 Elections in local labor organizations.

Local labor organizations must conduct their regular elections of officers by secret ballot among the members in good standing. All members in good standing of the local labor organization must be given an opportunity to vote directly for candidates to fill the offices that serve them. Indirect election of officers of a local labor organization would violate section 401(b) of the Act. For example, a procedure whereby the local's membership elects an executive board or some similar body by secret ballot which in turn selects (either from among its own membership or from the local's membership at large) the persons to fill specific offices would not comply with the

[20] See § 452.14 for a discussion of the selection of officers in a new or newly-merged labor organization.

Act.[21] Similarly, the election of a chief steward by the shop stewards would violate the Act if the chief steward, by virtue of that position, also serves as a member of the executive board, since members of the executive board must be elected directly by secret ballot among the members in good standing.

§ 452.27 National, international organizations, and intermediate bodies.

The officers of a national or international labor organization or of an intermediate body must be elected either directly by secret ballot among the members in good standing or indirectly by persons acting in a representative capacity who have been elected by secret ballot among all members in good standing.[22]

§ 452.28 Unopposed candidates.

An election of officers or delegates that would otherwise be required by the Act to be held by secret ballot need not be held by secret ballot when all candidates are unopposed and the following conditions are met: (a) The union provides a reasonable opportunity for nominations; (b) write-in votes are not permitted, as evidenced by provisions in the constitution and bylaws, by an official interpretation fairly placed on such documents, or by established union practice; and (c) the union complies with all other provisions of Title IV.

§ 452.29 Primary elections.

Where a union holds primary elections or similar procedures for eliminating candidates prior to the final vote in connection with regular elections subject to these provisions, the primary election or other procedure must be conducted in accordance with the same standards required under the Act for the final election.

§ 452.30 Run-off elections.

A run-off election must meet the standards set forth in Title IV if the original election was subject to the requirements of the Act. For example, if the run-off is to be held at the same meeting as the original election, the original notice of election must have so stated and all records pertaining to the run-off must be retained.

§ 452.31 One candidate for several offices.

Where a union constitution or other validly adopted rule provides that a single elected officer will perform the functions of more than one office, a separate election need not be held for each office.

Subpart E—Candidacy for Office; Reasonable Qualifications

§ 452.32 Persons who may be candidates and hold office; secret ballot elections.

Section 401(e) provides that in any election of officers required by the Act which is held by secret ballot, every member in good standing with the exceptions explained in sections following shall be eligible to be a candidate and to hold office. This provision is applicable not only to the election of officers in local labor organizations, but also to elections of officers in national or international and intermediate labor organizations where those elections are held by secret ballot referendum among the members, and to the election of delegates to conventions at which officers will be elected.

§ 452.33 Persons who may be candidates and hold office; elections at conventions.

Where elections of national or international labor organizations or of intermediate bodies are held at a convention of delegates elected by secret ballot, protection of the right to be a candidate and to hold office is afforded by the requirement in section 401(f) that the convention be conducted in accordance with the constitution and bylaws of the labor organization insofar as they are not inconsistent with the provisions of Title IV. If members in good standing are denied the right to be candidates by the imposition of unreasonable qualifications on eligibility for office such qualifications would be inconsistent with the provisions of Title IV.

§ 452.34 Application of section 504, LMRDA.

The eligibility of members of labor organizations to be candidates and to

[21] Wirtz v. Independent Petroleum Workers of America, 75 LRRM 2340, 63 L.C. ¶11,190 (N.D. Ind. 1970).

[22] See § 452.119 and following for discussion of indirect elections.

hold office in such organizations is subject only to the provisions of section 504(a), which bars individuals convicted of certain crimes from holding office in labor organizations [23] and to reasonable qualifications uniformly imposed. A person who is barred from serving in union office by section 504(a) is not eligible to be a candidate. However, a labor organization may permit a person who is barred from holding union office by section 504(a) to be a candidate for office if the section 504 disability will terminate by the customary date for the installation of officers. A labor organization may within reasonable limits adopt stricter standards than those contained in section 504(a) by extending the period of disability or by barring from union office persons who have been convicted of crimes other than those specified.

[38 FR 18324, July 9, 1973, as amended at 50 FR 31311, Aug. 1, 1985]

§ 452.35 Qualifications for candidacy.

It is recognized that labor organizations may have a legitimate institutional interest in prescribing minimum standards for candidacy and office-holding in the organization. On the other hand, a dominant purpose of the Act is to ensure the right of members to participate fully in governing their union and to make its officers responsive to the members. A basic assumption underlying the concept of "free and democratic elections," is that voters will exercise common sense and good judgment in casting their ballots. In union elections as in political elections, the good judgment of the members in casting their votes should be the primary determinant of whether a candidate is qualified to hold office. Therefore, restrictions placed on the right of members to be candidates must be closely scrutinized to determine whether they serve union purposes of such importance, in terms of protecting the union as an institution, as to justify subordinating the right of the individual member to seek office and the interest of the membership in a free, democratic choice of leaders.

§ 452.36 Reasonableness of qualifications.

(a) The question of whether a qualification is reasonable is a matter which is not susceptible of precise definition, and will ordinarily turn on the facts in each case. However, court decisions in deciding particular cases have furnished some general guidelines. The Supreme Court in Wirtz v. Hotel, Motel and Club Employees Union, Local 6, 391 U.S. 492 at 499 (1968) held that:

> Congress plainly did not intend that the authorization in section 401(e) of 'reasonable qualifications uniformly imposed' should be given a broad reach. The contrary is implicit in the legislative history of the section and in its wording that 'every member in good standing shall be eligible to be a candidate and to hold office * * *.' This conclusion is buttressed by other provisions of the Act which stress freedom of members to nominate candidates for Office. Unduly restrictive candidacy qualifications can result in the abuses of entrenched leadership that the LMRDA was expressly enacted to curb. The check of democratic elections as a preventive measure is seriously impaired by candidacy qualifications which substantially deplete the ranks of those who might run in opposition to incumbents.

Union qualifications for office should not be based on assumptions that certain experience or qualifications are necessary. Rather it must be assumed that the labor organization members

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[23] The disabling crimes set forth in the Act, sec. 504(a), as amended by sec. 803 of the Comprehensive Crime Control Act of 1984, Pub. L. 98-473, (29 U.S.C. 504) are robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, assault which inflicts grievous bodily injury, or a violation of title II or III of this Act, any felony involving abuse or misuse of a position or employment in a labor organization or employee benefit plan to seek or obtain an illegal gain at the expense of the members of the labor organization or the beneficiaries of the employee benefit plan, or conspiracy to commit any such crimes or attempt to commit any such crimes or a crime in which any of the foregoing crimes is an element."

NOTE: The U.S. Supreme Court, on June 7, 1965, held unconstitutional as a bll of attainder the section 504 provision which imposes criminal sanctions on Communist Party members for holding union office; U.S. v. Brown, 381 U.S. 437.

will exercise common sense and judgment in casting their ballots. "Congress' model of democratic elections was political elections in this country" (Wirtz v. Local 6, 391 U.S. at 502) and a qualification may not be required without a showing that citizens assumed to make discriminating judgments in public elections cannot be relied on to make such judgments when voting as union members.

(b) Some factors to be considered, therefore, in assessing the reasonableness of a qualification for union office are:

(1) The relationship of the qualification to the legitimate needs and interests of the union;

(2) The relationship of the qualification to the demands of union office;

(3) The impact of the qualification, in the light of the Congressional purpose of fostering the broadest possible participation in union affairs;

(4) A comparison of the particular qualification with the requirements for holding office generally prescribed by other labor organizations; and

(5) The degree of difficulty in meeting a qualification by union members.

§ 452.37 Types of qualifications.

Ordinarily the following types of requirements may be considered reasonable, depending on the circumstances in which they are applied and the effect of their application:

(a) *Period of prior membership.* It would ordinarily be reasonable for a local union to require a candidate to have been a member of the organization for a reasonable period of time, not exceeding two years, before the election. However, if a member is involuntarily compelled to transfer from one local to another, such a requirement would not be reasonable if he is not given credit for his prior period of membership.

(b) *Continuity of good standing.* A requirement of continuous good standing based on punctual payment of dues will be considered a reasonable qualification only if (1) it provides a reasonable grace period during which members may make up missed payments without loss of eligibility for office, [34] and (2) the period of time involved is reasonable. What are reasonable periods of time for these purposes will depend upon the circumstances. Section 401(e) of the Act provides that a member whose dues have been withheld by the employer for payment to the labor organization pursuant to his voluntary authorization provided for in a collective bargaining agreement may not be declared ineligible to vote or be a candidate for office by reason of alleged delay or default in the payment of dues. If during the period allowed for payment of dues in order to remain in good standing, a member on a dues checkoff system has no earnings from which dues can be withheld, section 401(e) does not relieve the member of the responsibility of paying his dues in order to remain in good standing.

§ 452.38 Meeting attendance requirements.

(a) It may be reasonable for a labor organization to establish a requirement of attendance at a specified number of its regular meetings during the period immediately preceding an election, in order to insure that candidates have a demonstrated interest in and familiarity with the affairs of the organization. In the past, it was ordinarily considered reasonable to require attendance at no more than 50 percent of the meetings over a period not exceeding two years. Experience has demonstrated that it is not feasible to establish arbitrary guidelines for judging the reasonableness of such a qualification. Its reasonableness must be gauged in the light of all the circumstances of the particular case, including not only the frequency of

[34] In Goldberg v. Amarillo General Drivers, Teamsters Local 577, 214 F. Supp. 74 (N.D. Tex. 1963), the disqualification of five nominees for union office for failure to satisfy a constitutional provision requiring candidates for office to have maintained continuous good standing for two years by paying their dues on or before the first business day of the current month, in advance, was held to be unreasonable. See also Wirtz v. Local Unions No. 9, 9-A and 9-B, International Union of Operating Engineers, 254 F. Supp. 980 (D. Colo. 1965), aff'd. 366 F. 2d 911 (CA 10 1966), vacated as moot 387 U.S. 96 (1967).

meetings, the number of meetings which must be attended and the period of time over which the requirement extends, but also such factors as the nature, availability and extent of excuse provisions, whether all or most members have the opportunity to attend meetings, and the impact of the rule, i.e., the number or percentage of members who would be rendered ineligible by its application. [25]

(a—1) In *Steelworkers, Local 3489* v. *Usery*, 429 U.S. 305, 94 LRRM 2203, 79 L.C. ¶ 11,806 (1977), the Supreme Court found that this standard for determining validity of meeting attendance qualifications was the type of flexible result that Congress contemplated when it used the word "reasonable." The Court concluded that Congress, in guaranteeing every union member the opportunity to hold office, subject only to "reasonable qualifications," disabled unions from establishing eligibility qualifications as sharply restrictive of the openness of the union political process as the Steelworkers' attendance rule. The rule required attendance at fifty percent of the meetings for three years preceding the election unless prevented by union activities or working hours, with the result that 96.5 percent of the members were ineligible.

(b) Other guidance is furnished by lower court decisions which have held particular meeting attendance requirements to be unreasonable under the following circumstances: One meeting during each quarter for the three years preceding nomination, where the effect was to disqualify 99 percent of the membership (*Wirtz* v. *Independent Workers Union of Florida*, 65 LRRM 2104, 55 L.C. par. 11,857 (M.D. Fla., 1967)); 75 percent of the meetings held over a two-year period, with absence excused only for work or illness, where over 97 percent of the members were ineligible (*Wirtz* v. *Local 153, Glass Bottle Blowers Ass'n*, 244 F. Supp. 745 (W.D. Pa., 1965), order vacating decision as moot, 372 F. 2d 86 (C.A. 3 1966), reversed 389 U.S. 463; decision on remand, 405 F.2d 176 (C.A. 3 1968)); *Wirtz* v. *Local 262, Glass bottle Blowers Ass'n.*, 290 F. Supp. 965 (N.D. Cal., 1968)); attendance at each of eight meetings in the two months between nomination and election, where the meetings were held at widely scattered locations within the state (*Hodgson* v. *Local Union No. 624 A-B, International Union of Operating Engineers*, 80 LRRM 3049, 68 L.C. par. 12,816 (S.D. Miss. Feb. 19, 1972)); attendance at not less than six regular meetings each year during the twenty-four months prior to an election which has the effect of requiring attendance for a period that must begin no later than eighteen months before a biennial election (*Usery* v. *Local Division 1205, Amalgamated Transit Union*, 545 F. 2d 1300 (C.A. 1, 1976)).

[38 FR 18324, July 3, 1973; as amended at 42 FR 39105, Aug. 2, 1977; 42 FR 41280, Aug. 16, 1977; 42 FR 45306, Sept. 9, 1977; 50 FR 31311, Aug. 1, 1985]

§ 452.39 Participation in insurance plan.

In certain circumstances, in which the duties of a particular office require supervision of an insurance plan in more than the formal sense, a union may require candidates for such office to belong to the plan.

§ 452.40 Prior office holding.

A requirement that candidates for office have some prior service in a lower office is not considered reasonable. [26]

[25] Cf. Wirtz v. Hotel, Motel and Club Employees Union, Local 6, 391 U.S. 492, at 502: "Plainly, given the objective of Title IV, a candidacy limitation which renders 93% of union members ineligible for office can hardly claim to be a 'reasonable qualification.' "

[26] Wirtz v. Hotel, Motel and Club Employees Union, Local 6, 391 U.S. 492 at 504. The Court stated that the union, in applying such a rule, "* * * assumes that rank and file union members are unable to distinguish qualified from unqualified candidates for particular offices without a demonstration of a candidate's performance in other offices. But Congress' model of democratic elections was political elections in this Country, and they are not based on any such assumption. Rather, in those elections the assumption is that voters will exercise common sense and judgment in casting their ballots. Local 6 made no showing that citizens assumed to make discriminating

Continued

§ 452.41 Working at the trade.

(a) It would ordinarily be reasonable for a union to require candidates to be employed at the trade or even to have been so employed for a reasonable period. In applying such a rule an unemployed member is considered to be working at the trade if he is actively seeking such employment. Such a requirement should not be so inflexible as to disqualify those members who are familiar with the trade but who because of illness, economic conditions, or other good reasons are temporarily not working.

(b) It would be unreasonable for a union to prevent a person from continuing his membership rights on the basis of failure to meet a qualification which the union itself arbitrarily prevents the member from satisfying. If a member is willing and able to pay his union dues to maintain his good standing and his right to run for office, it would be unreasonable for the union to refuse to accept such dues merely because the person is temporarily unemployed. Where a union constitution requires applicants for membership to be actively employed in the industry served by the union, a person who becomes a member would not be considered to forfeit his membership in the union or any of the attendant rights of membership merely because he is discharged or laid off.

(c) Ordinarily members working part-time at the trade may not for that reason alone be denied the right to run for office.

(d) A labor organization may postpone the right to run for office of members enrolled in a bona fide apprenticeship program until such members complete their apprenticeship.

§ 452.42 Membership in particular branch or segment of the union.

A labor organization may not limit eligibility for office to particular branches or segments of the union where such restriction has the effect of depriving those members who are not in such branch or segment of the right to become officers of the union. [27]

§ 452.43 Representative categories.

In the case of a position which is representative of a unit defined on a geographic, craft, shift, or similar basis, a labor organization may by its constitution or bylaws limit eligibility for candidacy and for holding office to members of the represented unit. For example, a national or international labor organization may establish regional vice-presidencies and require that each vice-president be a member of his respective region. This kind of limitation would not be considered reasonable, however, if applied to general officers such as the president, vice-president, recording secretary, financial secretary, and treasurer. If eligibility of delegates to a convention which will elect general officers is limited to special categories of members, all such categories within the organization must be represented.

§ 452.44 Dual unionism.

While the Act does not prohibit a person from maintaining membership or holding office in more than one labor organization, it would be considered reasonable for a union to bar from candidacy for office persons who hold membership in a rival labor organization.

§ 452.45 Multiple office holding.

An officer may hold more than one office in a labor organization so long as this is consistent with the constitution and bylaws of the organization.

§ 452.46 Characteristics of candidate.

Where personal characteristics have a direct bearing on fitness for office, a labor organization may establish certain restrictions on the right to be a candidate. For example, it may require a minimum age for candidacy or it may establish a compulsory retirement age for officers. A union may

judgments in public elections cannot be relied on to make such judgments when, voting as union members * * *."

[27] Hodgson v. Local Unions No. 18, etc., IUOE, 440 F. 2d 485 (C.A. 6), cert. den. 404 U.S. 852 (1971); Hodgson v. Local 610, Unit. Elec. Radio & Mach. Work. of Am., 342 F. Supp. 1344 (W.D. Pa. 1972).

not, however, establish such rules if they would be inconsistent with any other Federal law. Thus, it ordinarily may not limit eligibility for office to persons of any particular race, color, religion, sex, or national origin since this would be inconsistent with the Civil Rights Act of 1964.[28] A union may not require candidates for office to be registered voters and to have voted in public elections during the year preceding their nomination. Similarly, it cannot require that candidates have voted in the previous union election to be eligible. Such restrictions may not be said to be relevant to the member's fitness for office.

§ 452.47 Employer or supervisor members.

Inasmuch as it is an unfair labor practice under the Labor Management Relations Act (LMRA) for any employer (including persons acting in that capacity) to dominate or interfere with the administration of any labor organization, it follows that employers, while they may be members, may not be candidates for office or serve as officers. Thus, while it is recognized that in some industries, particularly construction, members who become supervisors, or contractors traditionally keep their union membership as a form of job security or as a means of retaining union benefits, such persons may not be candidates for or hold office.[29] Whether a restriction on officeholding by members who are group leaders or others performing some supervisory duties is reasonable depends on the particular circumstances. For instance, if such persons might be considered "supervisors"[30] under the LMRA, their right to be candidates under the Act may be limited. Another factor in determining the reasonableness of a ban on such persons is the position (if any) of the NLRB on the status of the particular employees involved. If, for example, the NLRB has determined that certain group leaders are part of the bargaining unit, it might be unreasonable for the union to prohibit them from running for office. An overall consideration in determining whether a member may fairly be denied the right to be a candidate for union office as an employer or supervisor is whether there is a reasonable basis for assuming that the person involved would be subject to a conflict of interest in carrying out his representative duties for employees and rank and file union members.

[38 FR 18324, July 3, 1973, as amended at 39 FR 37360, Oct. 21, 1974]

§ 452.48 Employees of union.

A labor organization may in its constitution and bylaws prohibit members who are also its full-time non-elective employees from being candidates for union office, because of the potential conflict of interest arising from the employment relationship which could be detrimental to the union as an institution.

§ 452.49 Other union rules.

(a) Unions may establish such other reasonable rules as are necessary to protect the members against leaders who may have committed serious offenses against the union. For example, a union may, after appropriate proceedings, bar from office persons who have misappropriated union funds, even if such persons were never indicted and convicted in a court of law for their offenses. Of course, the union would have to provide reasonable precautions to insure that no member is made ineligible to hold office on the basis of unsupported allegations and that any rights guaranteed him by the

[28] Shultz v. Local 1291, International Longshoremen's Association, 338 F. Supp. 1204 (E.D. Pa.), aff'd, 461 F.2d 1262 (C.A. 3, July 20, 1972).

[29] See Nassau and Suffolk Contractors' Association, 118 NLRB No. 19 (1957). See also Local 636, Plumbers v. NLRB, 287 F.2d 354 (C.A. D.C. 1961).

[30] Under section 2(11) of the Labor Management Relations Act, supervisors include individuals "having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

constitution and bylaws are protected. Similarly, a union may require an elected officer to sign an affidavit averring that he is not barred from serving as an officer by the provisions of section 504 of the Act since the union and its officers may not permit a person to serve as an officer if he is so barred (see footnote 23).

(b) It would not violate the Act for a union to prohibit successive terms in office or to limit the number of years an officer may serve. Such rules are intended to encourage as many members as possible to seek positions of leadership in the organization.

§ 452.50 Disqualification as a result of disciplinary action.

Section 401(e) was not intended to limit the right of a labor organization to take disciplinary action against members guilty of misconduct. So long as such action is conducted in accordance with section 101(a)(5), a union may, for example, if its constitution and bylaws so provide, bar from office for a period of time any member who is guilty of specific acts, such as strikebreaking, detrimental to the union as an institution. However, if a union has improperly disciplined a member and barred him from candidacy, the Secretary may, in an appropriate case, treat him as a member in good standing entitled to all of the rights of members guaranteed by Title IV.

§ 452.51 Declaration of candidacy.

A union may not adopt rules which in their effect discourage or paralyze any opposition to the incumbent officers. Therefore, it would not be a reasonable qualification to require members to file a declaration of candidacy several months in advance of the nomination meeting since such a requirement would have such effect and "serves no reasonable purpose which cannot otherwise be satisfied without resort to this procedure." [31]

[31] Wirtz v. Local 30, IUOE, 242 F. Supp. 631 (S.D. N.Y. 1965) reversed as moot 366 F.2d 438 (C.A. 2, 1966), reh. den. 366 F.2d 438.

§ 452.52 Filing fee.

It would be unreasonable to require candidates for office to pay a filing fee because a fee limits the right of members to a reasonable opportunity to nominate the candidates of their choice and there is no objective relationship between the requirement and the ability to perform the duties of the office.

§ 452.53 Application of qualifications for office.

Qualifications for office which may seem reasonable on their face may not be proper if they are applied in an unreasonable manner or if they are not applied in a uniform way. An essential element of reasonableness is adequate advance notice to the membership of the precise terms of the requirement. A qualification which is not part of the constitution and bylaws or other duly enacted rules of the organization may not be the basis for denial of the right to run for office, unless required by Federal or State law. [32] Qualifications must be specific and objective. They must contain specific standards of eligibility by which any member can determine in advance whether or not he is qualified to be a candidate. For example, a constitutional provision which states that "a candidate shall not be eligible to run for office who intends to use his office as a cloak to effect purposes inimical to the scope and policies of the union" would not be a reasonable qualification within the meaning of section 401(e) because it is so general as to preclude a candidate from ascertaining whether he is eligible and would permit determinations of eligibility based on subjective judgments. Further, such a requirement is by its nature not capable of being uniformly imposed as required by section 401(e).

[32] Wirtz v. Local Union 559, United Brotherhood of Carpenters and Joiners of America, 61 LRRM 2618, 53 L.C. ¶11.044 (W.D Ky. 1966); Hodgson v. Longshoremen's Local 1655 New Orleans Dray Clerks, 79 LRRM 2893, 67 L.C. ¶12,466 (E.D. La. January 5, 1972).

§ 452.54 Retroactive rules.

(a) The reasonableness of applying a newly adopted restriction on candidacy retroactively depends in part upon the nature of the requirement. It would be unreasonable for a labor organization to enforce eligibility requirements which the members had no opportunity to satisfy. For example, it would not be reasonable for a union to apply a newly adopted meeting attendance requirement retroactively since members would have no opportunity to comply with such requirement prior to its effective date. [33] When such a rule is in effect the membership is entitled to advance notice of the requirements of the rule and of the means to be used in verifying attendance. It would not be unreasonable, however, for a union to adopt and enforce a rule disqualifying persons convicted of a felony from being candidates or holding office.

(b) It would not be proper for a labor organization to amend its constitution after an election to make eligible a person who had been elected but who was not eligible at the time of the election.

Subpart F—Nominations for Office

§ 452.55 Statutory provisions concerning nomination.

In elections subject to the provisions of Title IV a reasonable opportunity must be afforded for the nomination of candidates. Although the Act does not prescribe particular forms of nomination procedures, it does require that the procedures employed be reasonable and that they conform to the provisions of the labor organization's constitution and bylaws insofar as they are not inconsistent with the provisions of Title IV.

§ 452.56 Notice.

(a) To meet this requirement, the labor organization must give timely notice reasonably calculated to inform all members of the offices to be filled in the election as well as the time, place, and form for submitting nominations. Such notice should be distinguished from the notice of election, discussed in § 452.99. Notice of nominations need not necessarily be given at least 15 days before nominations are held, nor is it required to be given by mail. In an election which is to be held by secret ballot, accordingly, notice of nominations may be given in any manner reasonably calculated to reach all members in good standing and in sufficient time to permit such members to nominate the candidates of their choice, so long as it is in accordance with the provisions of the labor organization's constitution or bylaws. Mailing such notice to the last known address of each member within a reasonable time prior to the date for making nominations would satisfy this requirement. Likewise, timely publication in the union newspaper with sufficient prominence to be seen by all members would be adequate notice. The method of making nominations, whether by mail, petition, or at meetings, could affect the determination of the timeliness of the notice. The nomination notice may be combined with the election notice if the requirements of both are met. Posting of a nomination notice may satisfy the requirement of a reasonable opportunity for making nominations if such posting is reasonably calculated to inform all members in good standing in sufficient time to permit such members to nominate the candidates of their choice.

(b) The requirement of a reasonable opportunity for the nomination of candidates has been met only when the members of a labor organization are fully informed of the proper method of making such nominations.

§ 452.57 Procedures for nomination.

(a) Since the Act does not prescribe particular procedures for the nomination of candidates, the labor organization is free to employ any method that will provide a reasonable opportunity for making nominations. There are various methods which, if properly and fairly employed, would be considered reasonable under the Act. For example, nominations may be by peti-

[33] Hodgson v. Longshoremen's Local 1655, New Orleans Dray Clerks, 79 LRRM 2893, 67 L.C. ¶12,466 (E.D. La. January 5, 1972)

tion, or from the floor at a nomination meeting.

(b) Whether a particular procedure is sufficient to satisfy the requirements of the Act is a question which will depend upon the particular facts in each case. While a particular procedure may not on its face violate the requirements of the Act, its application in a given instance may make nomination so difficult as to deny the members a reasonable opportunity to nominate.

§ 452.58 Self-nomination.

A system of self-nomination, if this is the only method for making nominations, deprives union members of a reasonable opportunity to nominate candidates and thus is inconsistent with the provisions of Title IV.[34] Self-nomination is permissible only if the members are afforded additional methods whereby they may nominate the candidates of their choice.

§ 452.59 Presence of nominee.

A requirement that members must be present at the nomination meeting in order to be nominated for office might be considered unreasonable in certain circumstances; for example, in the absence of a provision for an alternative method under which a member who is unavoidably absent from the nomination meeting may be nominated, such a restriction might be regarded as inconsistent with the requirement in section 401(e) that there be a reasonable opportunity to nominate and to be a candidate.

§ 452.60 Nominations for national, international or intermediate body office.

(a) When officers of a national or international labor organization or of an intermediate body are to be elected by secret ballot among the members of the constituent local unions, it is not unreasonable for the organization to employ a nominating procedure whereby each local may nominate only one candidate for each office. When such a procedure is employed the organization may require that each candidate be nominated by a certain number of locals before his name will appear on the ballot. The reasonableness of the number of local union nominations or endorsements required depends upon the size and dispersion of the organization.

(b) Nominations for national, international or intermediate body office by locals or other subordinate organizations differ from primary elections in that they are not subject to all the technical requirements of secret ballot elections.[35] However, where nominations are made by locals or other subordinate organizations fundamental safeguards must be observed including the right of members to vote for and support the candidates of their choice without improper interference.

§ 452.61 Elimination contests—local unions.

(a) A procedure in a local under which nominees compete in an elimination process to reduce the number of candidates in the final balloting is also part of the election process and must be conducted by secret ballot.

(b) When such an elimination process is used it would be unreasonable for some nominees, such as those selected by a nominating committee, to be exempt from the process since they would thus be given an unfair advantage over other nominees.

§ 452.62 Disqualification of candidates; procedural reasons.

A candidate who is otherwise eligible for office may not be disqualified because of the failure of a union officer to perform his duties which are beyond the candidate's control. For example, the failure of a local recording secretary to perform his duty to complete and forward a candidate's nomination certificate to the district

[34] See Wirtz v. National Maritime Union of America, 399 F.2d 544 (C.A. 2 1968).

[35] In Hodgson v. United Mine Workers of America, the Court directed that the nomination proceedings within the local unions be conducted by secret ballot and in accordance with the provisions of Title IV. [80 LRRM 3451, 68 L.C. ¶12,786 (D.D.C. June 15, 1972)]. This Order indicates that the use of secret ballot nominating procedures may be an appropriate remedial measure in a supervised election.

may not be used as the basis for disqualifying the candidate.

§ 452.63 Nominations at conventions.

In elections at conventions at which nominations are also made, delegates who have been elected by secret ballot must be given ample opportunity to nominate candidates on behalf of themselves or the members they represent. A union may adopt a rule limiting access to the convention floor to delegates. However, once the candidates have been nominated, they must be accorded equal opportunity to campaign. [36] Where delegates are instructed by locals to nominate candidates, the constitution of the organization or the convention rules should provide a specific procedure for the implementation of nominating instructions issued by any local to its delegate.

§ 452.64 Write-in votes.

The Act neither requires nor prohibits write-in candidacy or write-in votes. These matters are governed by appropriate provisions of the union's constitution and bylaws, applicable resolutions, or the established practice of the union.

§ 452.65 Interval between nominations and election.

The Act specifies no time interval between nominations and election. Thus, both may be scheduled to be held at the same meeting if, during a reasonable period prior to such nomination-election meeting, every member eligible to hold office who intends to run for office is afforded the protection provided in section 401(c), including sufficient opportunity to campaign for office.

Subpart G—Campaign Safeguards

§ 452.66 Statutory provisions.

The opportunity for members to have a free, fair, and informed expression of their choices among candidates seeking union office is a prime objective of Title IV of the Act. Voters can best be assured opportunity for an informed choice if certain campaign rights are guaranteed to candidates and their supporters. To this end, the statute provides that adequate safeguards to insure a fair election shall be provided, and states certain specific safeguards. These safeguards apply not only to candidates for officer positions as defined in the Act but also to candidates for delegate posts, if the delegates are to nominate or elect officers.

§ 452.67 Distribution of campaign literature.

The Act imposes the duty on the union and its officers to comply with all reasonable requests of any candidate to distribute his campaign literature to the membership at his expense. When the organization or its officers authorize distribution of campaign literature on behalf of any candidate, similar distribution under the same conditions must be made for any other candidate, if he requests it. In order to avoid charges of disparity of treatment among candidates, it is advised that a union inform all candidates in advance of the conditions under which distribution will be made and promptly advise them of any change in those conditions.

§ 452.68 Distribution to less than full membership.

Although section 401(c) specifies distribution to "all members in good standing," a labor organization must also honor requests for distribution of literature to only a portion of the membership if such distribution is practicable. Each candidate may choose his own ways of campaigning for election according to his own ingenuity and resources. For example, some candidates for national or international union office may desire to limit distribution to delegates, but others may want to appeal directly to the membership or parts thereof in an effort to influence particular constituencies to choose delegates favorable to their candidacy.

§ 452.69 Expenses of campaign literature.

Each candidate must be treated equally with respect to the expense of such distribution. Thus, a union and

[36] See § 452.79.

its officers must honor a candidate's request for distribution where the candidate is willing and able to bear the expense of such distribution. However, should the candidate be unable to bear such expense, there is no requirement that the union distribute the literature of the candidate free of charge. In the event the union distributes any candidate's literature without charge, however, all other candidates are entitled to have their literature distributed on the same basis. Since labor organizations have an affirmative duty to comply with all reasonable requests of any candidate to distribute campaign literature (at the candidate's expense), a union rule refusing all such distributions would not be proper, even though applied in a nondiscriminatory fashion. In view of the fact that expenses of distribution are to be borne by the candidate a labor organization may not refuse to distribute campaign literature merely because it may have a small staff which cannot handle such distribution for all candidates. If this is the case, the organization may employ additional temporary staff or contract the job to a professional mailer and charge the expense incurred to the candidates for whom the service is being rendered. The organization may require candidates to tender in advance the estimated costs of distributing their literature, if such requirement is applied uniformly.

§ 452.70 Contents of literature.

The Act does not and unions may not regulate the contents of campaign literature which candidates may wish to have distributed by the union. This is left to the discretion of each candidate. The labor organization may not require that it be permitted to read a copy of the literature before it is sent out, nor may it censor the statements of the candidates in any way, even though the statement may include derogatory remarks about other candidates. Furthermore, a union's contention that mailing of certain campaign literature may constitute libel for which it may be sued has been held not to justify its refusal to distribute the literature, since the union is under a statutory duty to distribute the material. [37]

§ 452.71 Inspection of membership lists.

(a) Each bona fide candidate for office has a right, once within 30 days prior to any election in which he is a candidate, to inspect a list containing the names and last known addresses of all members of the labor organization who are subject to a collective bargaining agreement requiring membership therein as a condition of employment. The right of inspection does not include the right to copy the list but does include the right to compare it with a personal list of members. It is the intent of the Act that such membership lists be made available for inspection at the candidates' option any time within the 30-day period. The list is not required to be maintained continuously and may be compiled immediately before each election. The form in which the list is to be maintained is not specified by the Act. Thus, a card index system may satisfy the requirements of the Act. The list may be organized alphabetically or geographically, or by local in a national or international labor organization.

(b) It is the duty of the labor organization and its officers to refrain from discrimination in favor of or against any candidate with respect to the use of lists of members. Thus, if a union permits any candidate to use such lists in any way other than the right of inspection granted by the Act, it must inform all candidates of the availability of the list for that purpose and accord the same privilege to all candidates who request it. Such privileges may include permitting inspection of the list where members are not subject to a collective bargaining agreement requiring membership as a condition of employment, inspecting the list more than once, or copying the list.

[38 FR 18324, July 9, 1973, as amended at 50 FR 31311, Aug. 1, 1985]

[37] See Philo v. Stellato, (E.D. Mich. Civil No. 21244, May 24, 1961); Ansley v. Fulco, (Calif. Ct. of Appeal, First App. District, Div. Three, 1 Civil No. 29483, May 31, 1972).

§ 452.72 Period of inspection.

The Act specifies the maximum period during which the right of inspection of membership lists is to be granted. The opportunity to inspect the lists must be granted once during the 30-day period prior to the casting of ballots in the election. Thus, where a mail ballot system is employed under which ballots are returnable as soon as received by members, the right to inspect must be accorded within the 30-day period prior to the mailing of the ballots to members. It would be an unreasonable restriction to permit inspection of lists only after the ballots have been mailed or the balloting has commenced.

§ 452.73 Use of union funds.

In the interest of fair union elections, section 401(g) of the Act places two limitations upon the use of labor organization funds derived from dues, assessments, or similar levy. These limitations are: (a) No such funds may be contributed or applied to promote the candidacy of any person in an election subject to Title IV, either in an election within the organization expending the funds or in any other labor organization; and (b) no such funds may be used for issuing statements involving candidates in the election. This section is not intended to prohibit a union from assuming the cost of distributing to the membership on an equal basis campaign literature submitted to the union by the candidates pursuant to the rights granted by section 401(c), as previously discussed, nor does it prohibit the expenditure of such funds for notices, factual statements of issues not involving candidates, and other expenses necessary for the holding of the election.

§ 452.74 Expenditures permitted.

The Act does not prohibit impartial publication of election information. Thus, it would not be improper for a union to sponsor a debate at which all candidates for a particular office are afforded equal opportunity to express their views to the membership prior to an election. Similarly, a union may issue information sheets containing biographical data on all candidates so long as all candidates are given equal opportunity to submit such data.

§ 452.75 Union newspapers.

The provisions of section 401(g) prohibit any showing of preference by a labor organization or its officers which is advanced through the use of union funds to criticize or praise any candidate. Thus, a union may neither attack a candidate in a union-financed publication nor urge the nomination or election of a candidate in a union-financed letter to the members. Any such expenditure regardless of the amount, constitutes a violation of section 401(g). [38]

§ 452.76 Campaigning by union officers.

Unless restricted by constitutional provisions to the contrary, union officers and employes retain their rights as members to participate in the affairs of the union, including campaigning activities on behalf of either faction in an election. However, such campaigning must not involve the expenditure of funds in violation of section 401(g). Accordingly, officers and employees may not campaign on time that is paid for by the union, nor use union funds, facilities, equipment, stationery, etc., to assist them in such campaigning. Campaigning incidental to regular union business would not be a violation.

§ 452.77 Permissible use of union funds.

Certain uses of union funds are considered permissible under section 401(g). For example, a court rules that money of a subordinate union may be contributed to a committee formed to challenge the results of a national union election under Title IV when such contributions are properly authorized by the members in an effort to pursue election remedies both within and outside the union. In holding such activity to be outside the prohibitions of section 401(g), although the committee was formed by defeated

[38] Hodgson v. Liquor Salesmen's Union, Local No. 2, 334 F.Supp. 1369 (S.D. N.Y.) aff'd 444 F.2d 1344 (C.A. 2 1971); Shultz v. Local Union 6799, United Steelworkers, 426 F.2d 969 (C.A. 9 1970).

candidates and their supporters, the court stated that "* * * It does not promote the candidacy of any person if an election is declared invalid by a court under Title IV's procedure despite the fact that in the rerun election the candidates may be identical. Neither the winner nor the loser of the disputed election gains votes by the setting aside of the election. Such action is not a vote-getting device but merely returns the parties to their pre-election status; it does not place any candidate into office." [39]

§ 452.78 Expenditures by employers.

(a) As an additional safeguard, section 401(g) provides that no money of an employer is to be contributed or applied to promote the candidacy of any person in an election subject to the provisions of Title IV. This includes indirect as well as direct expenditures. Thus, for example, campaigning by union stewards on company time with the approval of the employer would violate section 401(g) unless it can be shown that they are on legitimate work assignments, and that their campaign activities are only incidental to the performance of their assigned task and do not interfere with its performance. This prohibition against the use of employer money includes any costs incurred by an employer, or anything of value contributed by an employer, in order to support the candidacy of any individual in an election. It would not, however, extend to ordinary business practices which result in conferring a benefit, such as, for example, a discount on the cost of printing campaign literature which is made available on the same terms to other customers.

(b) The prohibition against the use of employer money to support the candidacy of a person in any election subject to the provisions of Title IV is not restricted to employers who employ members of the labor organization in which the election is being conducted, or who have any business or contractual relationship with the labor organization.

§ 452.79 Opportunity to campaign.

There must be a reasonable period prior to the election during which office-seekers and their supporters may engage in the campaigning that the Act contemplates and guarantees. What is a reasonable period of time would depend upon the circumstances, including the method of nomination and the size of the union holding the election, both in terms of the number of members and the geographic area in which it operates. For example, a candidate for office in a local labor organization was improperly disqualified and then appealed to the international union which directed that his name be placed on the ballot. A complaint was considered properly filed alleging election violations because the candidate's name was restored to the ballot two days prior to the election so that he was denied an equal opportunity to campaign. Similarly, in a mail ballot election a union's delay in the distribution of campaign literature until after the ballots have been distributed and some have been cast would not satisfy the requirement to distribute such literature in compliance with a reasonable request. [40] Such a delay would deny the candidate a reasonable opportunity to campaign prior to the election and would thus not meet the requirement for adequate safeguards to insure a fair election. Where access to the convention floor is limited exclusively to delegates at a convention at which officers are to be elected, there must, nevertheless, be equal opportunity for all nominees to campaign. Thus, if the privilege of addressing the convention is accorded to any of the nominees, it must be accorded to all nominees who request it, whether they are delegates or not.

§ 452.80 Bona fide candidates.

A person need not be formally nominated in order to be a bona fide candidate entitled to exercise the rights mentioned in §§ 452.67 and 452.71. [41]

[39] Retail Clerks Union, Local 648 v. Retail Clerks International Association, 299 F.Supp. 1012, 1024 (D.D.C. 1969).

[40] Wirtz v. American Guild of Variety Artists, 267 F. Supp. 527 (S.D.N.Y. 1967).

[41] Yablonski v. United Mine Workers, 71 LRRM 2606, 60 L.C. 10,204 (D.D.C. 1969).

Thus, any qualified member seeking to be nominated and elected at a convention would be able to take advantage of the distribution rights even before the convention meets and thus attempt to influence members to select delegates favorable to his candidacy or to persuade the delegates to support his candidacy. A union may reasonably require that a person be nominated in order to be elected, but may not prevent a member who actively seeks office and is otherwise qualified from taking advantage of the campaign safeguards in the Act in an effort to gain the support necessary to be nominated.

§ 452.81 Rights in intermediate body elections.

While the literal language in section 401(c) relating to distribution of campaign literature and to discrimination with respect to the use of membership lists would seem to apply only to national, international and local labor organizations, two United States District Courts have held that these provisions also apply to intermediate bodies.[42] The Department of Labor considers these rulings to be consistent with the intent of Congress and, therefore, has adopted this position.

§ 452.82 Reprisal for exercising rights.

A member has a right to support the candidate of his choice without being subject to penalty, discipline, or improper interference or reprisal of any kind by the labor organization conducting the election or any member thereof.

§ 452.83 Enforcement of campaign safeguards.

Certain of the safeguards of section 401(c) are enforceable at the suit of any bona fide candidate. This special statutory right to sue is limited to the distribution of campaign literature by the labor organization and the forbearance of such organization from discrimination among candidates with respect to the use of membership lists. Of course, all Title IV safeguards, including those discussed in this paragraph, are subject to enforcement as provided in section 402. It should be noted that the right of a bona fide candidate to sue in the circumstances described herein is limited to the period prior to election. After the election, the only remedy would be through a suit by the Secretary under section 402.

[42] Antal v. UMW District 5, 64 LRRM 2222, 54 L.C. 11,621 (W.D. Pa. 1966); Schonfeld v. Rarback, 49 L.C. 19,039 (S.D.N.Y. 1964).

Subpart H—Right to Vote

§ 452.84 General.

Under the provisions of section 401(e), every member in good standing is entitled to vote in elections required under Title IV which are to be held by secret ballot. The phrase "member in good standing" includes any person who has fulfilled the requirements for membership and who neither has withdrawn from membership nor has been expelled or suspended from membership after appropriate proceedings consistent with lawful provisions of the constitution and bylaws of the organization.[43]

§ 452.85 Reasonable qualifications on right to vote.

The basic right of members to vote in elections of the labor organization may be qualified by reasonable rules and regulations in its constitution and bylaws.[44]

§ 452.86 Vote conditioned on payment of dues.

A labor organization may condition the exercise of the right to vote upon the payment of dues, which is a basic obligation of membership. Such a rule must be applied uniformly. If a member has not paid his dues as required by the labor organization's constitution or bylaws he may not be allowed to vote. Thus, a rule which suspends a member's right to vote in an election of officers while the member is laid off and is not paying dues would not, in ordinary circumstances, be considered unreasonable, so long as it is

[43] Act, sec. 3(o).
[44] Act, sec. 101(a)(1).

applied in a nondiscriminatory manner. However, members must be afforded a reasonable opportunity to pay dues, including a grace period during which dues may be paid without any loss of rights. In the case where a member is laid off but desires to maintain his good standing and thus his membership rights by continuing to pay dues, it would be clearly unreasonable for the labor organization to refuse to accept his payment.

§ 452.87 Dues paid by checkoff.

A member in good standing whose dues are checked off by his employer pursuant to his voluntary authorization provided for in a collective bargaining agreement may not be disqualified from voting by reason of alleged delay or default in the payment of dues. For example, the constitution and bylaws of a labor organization call for suspension of members whose dues are three months in arrears. Dues to be paid directly by a member are two months in arrears when the union changes to a checkoff system. The member may not be denied the right to vote merely because the employer is late in submitting the checked off dues for the first month. It would not be inconsistent with the Act, however, for a union to require a new member who executes a checkoff authorization to pay one month's dues in advance on the date he becomes a member in order to be in good standing for the current month.

§ 452.88 Resumption of good standing.

While it is permissible for a labor organization to deny the right to vote to those delinquent in paying their dues (with the exceptions noted) or to those who have been suspended or disciplined in accordance with section 101(a)(5) of the Act, a provision under which such persons are disqualified from voting for an extended period of time after payment of back dues or after reinstatement would not be considered reasonable. After a member has resumed his good-standing status, it would be unreasonable to continue to deprive him of his right to vote for a period longer than that for a new member. A new member may reasonably be required to establish a relationship with the union by remaining in good standing for a continuous period of time, e.g., 6 months or a year, before being permitted to vote in an election of officers. However, while the right to vote may be deferred within reasonable limits, a union may not create special classes of nonvoting members.

§ 452.89 Apprentices.

A labor organization may condition the right to vote upon completion of a bona fide program of apprenticeship training which is designed to produce competent tradesmen in the industry the union serves.

§ 452.90 Visiting members.

A decision about the voting rights of visiting members is properly one for resolution by the union in accordance with the organization's constitution and bylaws or applicable resolutions. For purposes of the Act, a person is ordinarily considered to be a member of the local to which he pays his dues.

§ 452.91 Voting by employers, supervisors.

Voting in union elections by employers, self-employed persons, supervisors or other persons who are considered to be part of management is not precluded by Title IV of the Act even if they are not required to maintain union membership as a condition of employment. However, as mentioned in the discussion of qualifications for candidacy (see § 452.47), such persons may not dominate or interfere with the administration of any labor organization.

§ 452.92 Unemployed members.

Members who are otherwise qualified to vote may not be disqualified from voting merely because they are currently unemployed or are employed on a part-time basis in the industry served by the union, provided, of course, that such members are paying dues.

§ 452.93 Retired members.

The right of retirees to vote may be restricted to the extent provided by the constitution and bylaws of the labor organization.

§ 452.94 Reasonable opportunity to vote.

The statutory protection of the right to vote implies that there must be a reasonable opportunity to vote. Thus, there is an obligation on the labor organization to conduct its periodic election of officers in such a way as to afford all its members a reasonable opportunity to cast ballots. A union may meet this obligation in a variety of ways, depending on factors such as the distance between the members' work site or homes and the polling place, the means of transportation available, the nature of the members' occupations, and their hours of work. A reasonable opportunity to vote may require establishing multiple polling places or the use of a mail ballot referendum when the members are widely dispersed. It would also be reasonable for the time period for voting to be extended to accommodate members who might otherwise be prevented from voting due to conflicting work schedules. Shortening the voting period by a late opening of the polls would not, in itself, be improper unless the intent or practical effect of such action is to deprive members of their right to vote.

§ 452.95 Absentee ballots.

Where the union knows in advance that a substantial number or a particular segment of the members will not be able to exercise their right to vote in person, as, for example, when access to a polling place is impracticable for many members because of shipping assignments, absentee ballots or other means of voting must be made available.[45] In the event absentee ballots are necessary the organization must give its members reasonable notice of the availability of such ballots.[46]

[45] Goldberg v. Marine Cooks and Stewards Union, 204 F. Supp. 844 (N.D. Cal. 1962).

[46] Wirtz v. Local Union 262, Glass Bottle Blowers Association, 290 F. Supp. 965 (N.D. Calif. 1968).

Subpart I—Election Procedures; Rights of Members

§ 452.96 General.

The Act safeguards democratic processes by prescribing, in section 401, minimum standards for the regular periodic election of officers in labor organizations subject to its provisions. It does not, however, prescribe in detail election procedures which must be followed. Labor organizations are free to establish procedures for elections as long as they are fair to all members and are consistent with lawful provisions of the organization's constitution and bylaws and with section 401. The rights granted to members in section 401(e) refer to individuals, not labor organizations. For example, while locals may be members of an intermediate body, they are not entitled to the rights granted "members" in section 401(e).

§ 452.97 Secret ballot.

(a) A prime requisite of elections regulated by Title IV is that they be held by secret ballot among the members or in appropriate cases by representatives who themselves have been elected by secret ballot among the members. A secret ballot under the Act is "the expression by ballot, voting machine, or otherwise, but in no event by proxy, of a choice * * * cast in such a manner that the person expressing such choice cannot be identified with the choice expressed."[47] Secrecy may be assured by the use of voting machines, or, if paper ballots are used, by providing voting booths, partitions, or other physical arrangements permitting privacy for the voter while he is marking his ballot. The ballot must not contain any markings which upon examination would enable one to identify it with the voter. Balloting by mail presents special problems in assuring secrecy. Although no particular method of assuring such secrecy is prescribed, secrecy may be assured by the use of a double envelope system for return of the voted ballots with

[47] Act, sec. 3(k).

the necessary voter identification appearing only on the outer envelope.

(b) Should any voters be challenged as they are casting their ballots, there should be some means of setting aside the challenged ballots until a decision regarding their validity is reached without compromising the secrecy requirement. For example, each such ballot might be placed in an envelope with the voter's name on the outside. Of course, it would be a violation of the secrecy requirement to open these envelopes and count the ballots one at a time in such a way that each vote could be identified with a voter.

(c) In a mail ballot election, a union may require members to sign the return envelope if the signatures may be used in determining eligibility. However, it would be unreasonable for a union to void an otherwise valid ballot merely because a member printed rather than signed his name if the union does not use the signatures to determine voter eligibility.

§ 452.98 Outside agencies.

There is nothing in the Act to prevent a union from employing an independent organization as its agent to handle the printing, mailing, and counting of ballots in such elections if all the standards of the Act are met.

§ 452.99 Notice of election.

Elections required by Title IV to be held by secret ballot must be preceded by a notice of election mailed to each member at his last known home address not less than fifteen days prior to the election. [48] For purposes of computing the fifteen day period, the day on which the notices are mailed is not counted whereas the day of the election is counted. For example, if the election is to be held on the 20th day of the month, the notices must be mailed no later than the 5th day. The notice must include a specification of the date, time and place of the election and of the offices to be filled, and it must be in such form as to be reasonably calculated to inform the members of the impending election. Specification of the offices to be filled would not be necessary if it is a regular, periodic election of all officers and the notice so indicates. A statement in the union bylaws that an election will be held at a certain time does not constitute the notice required by the statute. Since the Act specifies that the notice must be mailed, other means of transmission such as posting on a bulletin board or hand delivery will not satisfy the requirement. A notice of election must be sent to every member as defined in section 3(o) of the Act, not only to members who are eligible to vote in the election. Where the notice, if mailed to the last known permanent or legal residents of the member, would not be likely to reach him because of a known extended absence from that place, the statutory phrase "last known home address" may reasonably be interpreted to refer to the last known temporary address of definite duration. A single notice for both nominations and election may be used if it meets the requirements of both such notices. [49]

§ 452.100 Use of union newspaper as notice.

A labor organization may comply with the election notice requirement by publishing the notice in the organization's newspaper which is mailed to the last known home address of each member not less than fifteen days prior to the election. Where this procedure is used (a) the notice should be conspicuously placed on the front page of the newspaper, or the front page should have a conspicuous reference to the inside page where the notice appears, so that the inclusion of the election notice in a particular issue is readily apparent to each member; (b) the notice should clearly identify the particular labor organization holding the election; (c) the notice should specify the time and place of the election and the offices to be filled; and (d) a reasonable effort must be made to keep the mailing list of the publication current.

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[48] Act, sec. 401(e).

[49] See § 452.56 for a discussion of the requirements for notices of nomination.

§ 452.101 Sample ballots as notice.

Sample ballots together with information as to the time and place of the election and the offices to be filled, if mailed fifteen days prior to the election, will fulfill the election notice requirements.

§ 452.102 Notice in mail ballot election.

If the election is conducted by mail and no separate notice is mailed to the members, the ballots must be mailed to the members no later than fifteen days prior to the date when they must be mailed back in order to be counted.

§ 452.103 Primary elections.

The fifteen-day election notice provision applies to a "primary election" at which nominees are chosen. Likewise, the fifteen-day election notice requirement applies to any runoff election which may be held after an inconclusive election. However, a separate notice would not be necessary if the election notice for the first election advises the members of the possibility of a runoff election and specifies such details as the time and place of such runoff election as may be necessary.

§ 452.104 Proximity of notice to election.

(a) The statutory requirement for giving fifteen days' notice of election is a minimum standard. There is no objection to giving more notice than is required by law. However, it was clearly the intent of Congress to have members notified at a time which reasonably precedes the date of the election. For example, notice in a union publication which is expected to cover elections to be held six months later would not be considered reasonable.

(b) Should a union change the date of an election from the date originally announced in the mail notice to the members, it must mail a second notice, containing the corrected date, at least fifteen days before the election.

§ 452.105 Interference or reprisal.

Title IV expressly provides for the right of a member to vote for and otherwise support the candidates of his choice without being subject to penalty, discipline, or improper interference or reprisal of any kind by the labor organization conducting the election or any officer or member thereof. [50]

§ 452.106 Preservation of records.

In every secret ballot election which is subject to the Act, the ballots and all other records pertaining to the election must be preserved for one year. [51] The responsibility for preserving the records is that of the election officials designated in the constitution and bylaws of the labor organization or, if none is so designated, its secretary. Since the Act specifies that ballots must be retained, all ballots, marked or unmarked, must be preserved. Independent certification as to the number and kind of ballots destroyed may not be substituted for preservation. In addition, ballots which have been voided, for example, because they were received late or because they were cast for an ineligible candidate, must also be preserved.

§ 452.107 Observers.

(a) Under the provisions of section 401(c), each candidate must be permitted to have an observer (1) at the polls and (2) at the counting of the ballots. This right encompasses every phase and level of the counting and tallying process, including the counting and tallying of the ballots and the totaling, recording, and reporting of tally sheets. If there is more than one polling place, the candidate may have an observer at each location. If ballots are being counted at more than one location or at more than one table at a single location, a candidate is entitled to as many observers as necessary to observe the actual counting of ballots. The observer may note the names of those voting so that the candidates may be able to ascertain whether unauthorized persons voted in the elec-

[50] Act, section 401(e). In Wirtz v. Local 1752, ILA, 56 LRRM 2303, 49 L.C. ¶18,998 (S.D. Miss. 1963), the court, under its equitable jurisdiction, granted a preliminary injunction on the motion of the Secretary to enjoin a union from taking disciplinary action against a member. The member had filed a complaint with the Secretary under section 402(a) that resulted in the Secretary filing suit under 402(b).

[51] Act, section 401(e).

tion. The observers should be placed so that they do not compromise, or give the appearance of compromising, the secrecy of the ballot. The observer is not required to be a member of the labor organization unless the union's constitution and bylaws require him to be a member. There is no prohibition on the use of alternate observers, when necessary, or on a candidate serving as his own observer. Observers do not have the right to count the ballots.

(b) The right to have an observer at the polls and at the counting of the ballots extends to all candidates for office in an election subject to Title IV, i.e., this includes elections in intermediate bodies as well as elections in locals and national and international labor organizations.

(c) In any secret ballot election which is conducted by mail, regardless of whether the ballots are returned by members to the labor organization office, to a mail box, or to an independent agency such as a firm of certified public accountants, candidates must be permitted to have an observer present at the preparation and mailing of the ballots, their receipt by the counting agency and at the opening and counting of the ballots.

(d) Paying election observers is the responsibility of the candidate they represent unless the union has a rule providing for the payment of observers. If the union does have such a rule, it must be uniformly applied to all candidates.

§ 452.108 Publication of results.

In any election which is required by the Act to be held by secret ballot, the votes cast by members of each local labor organization must be counted, and the results published, separately.[52] For example, where officers of an intermediate body are elected directly by members, the votes of each local must be tabulated and published separately. The publishing requirement is to assure that the results of the voting in each local are made known to all interested members. Thus, the presentation of the election report at a regular local membership meeting, and the entry of the report in the minutes, would normally accomplish this purpose in a local election. Such minutes would have to be available for inspection by members at reasonable times, unless copies of the report are made available. In an election that encompasses more than one local, publication may be accomplished by posting on appropriate bulletin boards, or in a union newspaper, or by any procedure which allows any member to obtain the information without unusual effort. Of course, the counting and reporting should account for all ballots cast in the election, although only valid votes will be counted in determining the successful candidates.

§ 452.109 Constitution of labor organization.

Elections must be conducted in accordance with the constitution and bylaws of the organization insofar as they are not inconsistent with the provisions of Title IV.[53]

§ 452.110 Adequate safeguards.

(a) In addition to the election safeguards discussed in this Part, the Act contains a general mandate in section 401(c), that adequate safeguards to insure a fair election shall be provided. Such safeguards are not required to be included in the union's constitution and bylaws, but they must be observed. A labor organization's wide range of discretion regarding the conduct of elections is thus circumscribed by a general rule of fairness. For example, if one candidate is permitted to have his nickname appear on the ballot, his opponent should enjoy the same privilege.

(b) A union's failure to provide voters with adequate instructions for properly casting their ballots may violate the requirement of adequate safeguards to insure a fair election.

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[52] Act, sec. 401(e). See also Senate Report 187, 86th Cong. 1st sess., p. 47; Daily Cong. Rec. p. 13682, Aug. 3, 1959, and p. A6573, July 29, 1959.

[53] Act, sec. 401(e). Under 29 CFR 402.10, a labor organization is required to make available to all members a copy of its constitution and bylaws.

§ 452.111 Campaigning in polling places.

There must not be any campaigning within a polling place [54] and a union may forbid any campaigning within a specified distance of a polling place.

§ 452.112 Form of ballot; slate voting.

The form of the ballot is not prescribed by the Act. Thus, a union may, if it so desires, include a proposed bylaw change or other similar proposal on a ballot along with the candidates for office so long as this is permissible under the union's constitution and bylaws. A determination as to the position of a candidate's name on the ballot may be made by the union in any reasonable manner permitted by its constitution and bylaws, consistent with the requirement of fairness and the other provisions of the Act. For example, candidates may be listed according to their affiliation with a particular slate. However, while "slate voting" is permissible, the balloting must be consistent with the right of members to vote for the candidates of their choice. Thus, there must be provision for the voter to choose among individual candidates if he does not wish to vote for an entire slate. To avoid any misunderstanding in this regard, the voting instructions should specifically inform the voter that he need not vote for an entire slate.

§ 452.113 Sectional balloting.

The ballots may be prepared so that the names of candidates for positions representative of a particular area appear only on the ballots received by members living in that area.

§ 452.114 Write-in votes.

Where write-in votes are permitted in an election subject to Title IV, details of the format of the ballot are left to the discretion of the union. Ordinarily, the Secretary would become involved in such matters only in the context of an election complaint under section 402 and then only if the arrangements for write-in votes were so unreasonable that the outcome of the election may have been affected. Of course, a union may, in accordance with its constitution and bylaws or as a matter of stated policy, refuse to permit write-in votes.

§ 452.115 Distribution of ballots.

So long as secrecy of the ballot is maintained, there is no restriction on how the ballots are distributed to the voters. Any method which actually provides each eligible voter with one blank ballot would be in conformance with the law.

§ 452.116 Determining validity of ballots.

Generally, a labor organization has a right to establish reasonable rules for determining the validity of ballots cast in an election. However, where the union has no published guides for determining the validity of a voted ballot, it must count any ballot voted in such a way as to indicate fairly the intention of the voter. An entire ballot may not be voided because of a mistake made in voting for one of the offices on the ballot.

§ 452.117 Majority of votes not required for election.

A labor organization may by its constitution and bylaws provide for the election of the candidate who receives the greatest number of votes, although he does not have a majority of all the votes cast. Alternatively, it may provide that where no candidate receives a majority of all the votes cast, a run-off election be held between the two candidates having the highest vote. Similarly, a labor organization conducting an election to choose five members of an executive board may designate as elected from among all the nominees the five candidates who receive the highest vote.

§ 452.118 Local unions agents in international elections.

An international union may establish internal rules which require local or intermediate union officials to act as agents of the international in conducting designated aspects of the international referendum election of officers. The consequences of the failure to perform as directed by such of-

[54] See Hodgson v. UMW, 344 F.Supp. 17 (D.D.C. 1972).

ficials will, of course, depend on the totality of the circumstances involved.

§ 452.119 Indirect elections.

National or international labor organizations subject to the Act have the option of electing officers either directly by secret ballot among the members in good standing or at a convention of delegates or other representatives who have been elected by secret ballot among the members. Intermediate labor organizations subject to the Act have the option of electing officers either directly by secret ballot among the members in good standing or by labor organization officers or delegates elected by secret ballot vote of the members they represent. Local unions, in contrast, do not have the option of conducting their periodic elections of officers indirectly through representatives.

§ 452.120 Officers as delegates.

Officers of labor organizations who have been elected by secret ballot vote of their respective memberships may, by virtue of their election to office, serve as delegates to conventions at which officers will be elected, if the constitution and bylaws of the labor organization so provide. In such cases it is advisable to have a statement to this effect included on the ballots. Persons who have been appointed to serve unexpired terms of officers who are ex officio delegates to a convention at which officers will be elected may not vote for officers in such election.

§ 452.121 Limitations on national or international officers serving as delegates.

While officers of national or international labor organizations or of intermediate bodies who have been elected by a vote of the delegates to a convention may serve as delegates to conventions of their respective labor organizations if the constitution and bylaws so provide, they may not vote in officer elections at such conventions unless they have also been elected as delegates by a secret ballot vote of the members they are to represent. Of course, such officers may participate in the convention, i.e., they may preside over the convention, be nominated as candidates, or act in other capacities permitted under the organization's constitution and bylaws.

§ 452.122 Delegates from intermediate bodies; method of election.

A delegate from an intermediate body who participates in the election of officers at a national or international convention must have been elected by a secret ballot vote of the individual members of the constituent units of that body. He may not participate if he was elected by the delegates who make up the intermediate body. The secret ballot election required by the Act is an election among the general membership and not an election of delegates by other delegates.

§ 452.123 Elections of intermediate body officers.

Section 401(d) states that officers of intermediate bodies shall be elected either by secret ballot among the members in good standing or by labor organization officers representative of such members who have been elected by secret ballot. The phrase "officers representative of such members" includes delegates who have been elected by secret ballot to represent labor organizations in intermediate bodies. Such delegates may therefore participate in the election of officers of intermediate bodies regardless of whether they are characterized as officers of the labor organization they represent.

§ 452.124 Delegates from units which are not labor organizations.

To the extent that units, such as committees, which do not meet the definition of a labor organization under the Act[55] participate in the election of officers of a national or international labor organization or an intermediate body, through delegates to the convention or otherwise, the provisions of Title IV are, nevertheless, applicable to the election of such delegates. The following example is typical in organizations of railway employees. The chairman of a local grievance committee, which is not a labor

[55] Act, sec. 3 (i) and (j) and Part 451 of this chapter.

organization under the Act, is not an officer within the meaning of the Act. If such a local chairman is a delegate to the general grievance committee, which is considered to be an intermediate body under the Act, however, he must be elected by secret ballot vote of the members he represents, if he votes for officers of the general grievance committee.

§ 452.125 Delegates from labor organizations under trusteeship.

It would be unlawful under section 303(a)(1) of the Act to count the votes of delegates from a labor organization under trusteeship in any convention or election of officers of the organization imposing the trusteeship unless such delegates were chosen by secret ballot vote in an election in which all the members in good standing of the subordinate organization were eligible to participate.[56]

§ 452.126 Delegates to conventions which do not elect officers.

Delegates to conventions need not be elected by secret ballot when officers of the organization are elected by a secret ballot vote of the entire membership. However, if the only method of making nominations is by delegates, then the delegates must be elected by secret ballot.

§ 452.127 Proportionate representation.

When officers of a national, international or intermediate labor organization are elected at a convention of delegates who have been chosen by secret ballot, the structure of representation of the membership is a matter for the union to determine in accordance with its constitution and bylaws. There is no indication that Congress intended, in enacting Title IV of the Act, to require representation in delegate bodies of labor organizations to reflect the proportionate number of members in each subordinate labor organization represented in such bodies. Questions of such proportionate representation are determined in accordance with the labor organization's constitution and bylaws insofar as they are not inconsistent with the election provisions of the Act. Congress did not attempt to specify the organizational structure or the system of representation which unions must adopt. However, all members must be represented; the union may not deny representation to locals below a certain size.

§ 452.128 Under-strength representation.

A local union may elect fewer delegates than it is permitted under the union constitution as long as the local is allowed to determine for itself whether or not it will send its full quota of delegates to the union convention. The delegates present from a local may cast the entire vote allotted to that local if this is permitted by the constitution and bylaws.

§ 452.129 Non-discrimination.

Further, distinctions in representational strength among or within locals may not be based on arbitrary and unreasonable factors such as race, sex, or class of membership based on type of employment.

§ 452.130 Expenses of delegates.

A local may elect two groups—one which would receive expenses while the other would be required to pay its own way, provided each member has an equal opportunity to run for the expense-paid as well as the non-expense-paid positions.

§ 452.131 Casting of ballots; delegate elections.

The manner in which the votes of the representatives are cast in the convention is not subject to special limitations. For example, the voting may be by secret ballot, by show of hands, by oral roll call vote, or if only one candidate is nominated for an office, by acclamation or by a motion authorizing the convention chairman to cast a unanimous vote of the delegates present.

§ 452.132 Proxy voting.

There is no prohibition on delegates in a convention voting by proxy, if the constitution and bylaws permit.

[56] Section 303(b) of the LMRDA provides criminal penalties for violation of section 303(a)(1).

§ 452.133 Election of delegates not members of the labor organization.

A labor organization's constitution and bylaws may authorize the election of delegates who are not members of the subordinate labor organization they represent, provided the members of the subordinate organization are also eligible to be candidates.

§ 452.134 Preservation of records.

The credentials of delegates, and all minutes and other records pertaining to the election of officers at conventions, must be preserved for one year by the officials designated in the constitution and bylaws or by the secretary if no other officer is designated. This requirement applies not only to conventions of national or international labor organizations, but also to representative bodies of intermediate labor organizations.

Subpart J—Special Enforcement Provisions

§ 452.135 Complaints of members.

(a) Any member of a labor organization may file a complaint with the Office of Labor-Management Standards alleging that there have been violations of requirements of the Act concerning the election of officers, delegates, and representatives (including violations of election provisions of the organization's constitution and bylaws that are not inconsistent with the Act.).[57] The complaint may not be filed until one of the two following conditions has been met: (1) The member must have exhausted the remedies available to him under the constitution and bylaws of the organization and its parent body, or (2) he must have invoked such remedies without obtaining a final decision within three calendar months after invoking them.

(b) If the member obtains an unfavorable final decision within three calendar months after invoking his available remedies, he must file his complaint within one calendar month after obtaining the decision. If he has not obtained a final decision within three calendar months, he has the option of filing his complaint or of waiting until he has exhausted the available remedies within the organization. In the latter case, if the final decision is ultimately unfavorable, he will have one month in which to file his complaint.

§ 452.136 Investigation of complaint by Office of Labor-Management Standards, court action by the Secretary.

(a) The Office of Labor-Management Standards is required to investigate each complaint of a violation filed in accordance with the requirements of the Act and, if the Secretary finds probable cause to believe that a violation has occurred and has not been remedied, he is directed to bring within 60 days after the complaint has been filed a civil action against the labor organization in a Federal district court. In any such action brought by the Secretary the statute provides that if, upon a preponderance of the evidence after a trial upon the merits, the court finds (1) that an election has not been held within the time prescribed by the election provisions of the Act or (2) that a violation of these provisions "may have affected the outcome of an election", the court shall declare the election, if any, to be void and direct the conduct of an election under the supervision of the Secretary, and, so far as is lawful and practicable, in conformity with the constitution and bylaws of the labor organization.

(b) Violations of the election provisions of the Act which occurred in the conduct of elections held within the prescribed time are not grounds for setting aside an election unless they "may have affected the outcome." The Secretary, therefore, will not institute court proceedings upon the basis of a complaint alleging such violations unless he finds probable cause to believe that they "may have affected the outcome of an election."

(b-1) The Supreme Court, in "Hodgson v. Local Union 6799, Steelworkers Union of America," 403 U.S. 333, 91 S.Ct. 1841 (1971), ruled that the Secretary of Labor may not include in his complaint a violation which was

[57] Act, sec. 402(a).

known to the protesting member but was not raised in the member's protest to the union.

Complaints filed by the Department of Labor will accordingly be limited by that decision to the matters which may fairly be deemed to be within the scope of the member's internal protest and those which investigation discloses he could not have been aware of.

(c) Elections challenged by a member are presumed valid pending a final decision. The statute provides that until such time, the affairs of the labor organization shall be conducted by the elected officers or in such other manner as the union constitution and bylaws provide. However, after suit is filed by the Secretary the court has power to take appropriate action to preserve the labor organization's assets.

[38 FR 18324, July 3, 1973, as amended at 39 FR 37360, Oct. 21, 1974]

Subpart K—Dates and Scope of Application

§ 452.137 Effective dates.

(a) Section 404 states when the election provisions of the Act become applicable.[58] In the case of labor organizations whose constitution and bylaws can be lawfully modified or amended by action of the organization's "constitutional officers or governing body," the election provisions become applicable 90 days after the enactment of the statute (December 14, 1959). Where the modification of the constitution and bylaws of a local labor organization requires action by the membership at a general meeting or by referendum, the general membership would be a "governing body" within the meaning of this provision. In the cases where any necessary modification of the constitution and bylaws can be made only by a constitutional convention of the labor organization, the election provisions become applicable not later than the next constitutional convention after the enactment of the statute, or one year after the enactment of the statute, whichever is sooner.

(b) The statute does not require the calling of a special constitutional convention to make such modifications. However, if no convention is held within the one-year period, the executive board or similar governing body that has the power to act for the labor organization between conventions is empowered by the statute to make such interim constitutional changes as are necessary to carry out the provisions of Title IV of the Act. Any election held thereafter would have to comply with the requirements of the Act.

§ 452.138 Application of other laws.

(a) Section 403[59] provides that no labor organization shall be required by law to conduct elections of officers with greater frequency or in a different form or manner than is required by its own constitution or bylaws, except as otherwise provided by the election provisions of the Act.

(b) The remedy[60] provided in the Act for challenging an election already conducted is exclusive.[61] However, existing rights and remedies to enforce the constitutions and bylaws of such organizations before an election has been held are unaffected by the election provisions. Section 603[62] which applies to the entire Act, states that except where explicitly provided to the contrary, nothing in the Act shall take away any right or bar any remedy of any union member under other Federal law or law of any State.

[38 FR 18324, July 9, 1973, as amended at 50 FR 31311, Aug. 1, 1985]

[58] Act, sec. 404.

[59] Act, sec. 403.

[60] Act, sec. 402.

[61] Act, sec. 403. See Daily Cong. Rec. 86th Cong., 1st sess., p. 9115, June 8, 1959, pp. 13017 and 13090, July 27, 1959. H. Rept. No. 741, p. 17; S. Rept. No. 187, pp. 21-22, 101, 104. Hearings, House Comm. on Education and Labor, 86th Cong., 1st sess., pt. 1, p. 1611. See also *Furniture Store Drivers Local 82* v. *Crowley*, 104 S.Ct. 2557 (1984).

[62] Act, sec. 603.

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PART 453—GENERAL STATEMENT CONCERNING THE BONDING REQUIREMENTS OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959

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AUTHORITY: Sec. 502, 73 Stat. 536; 29 U.S.C. 502; Secretary's Order No. 3-84 (49 FR 20578).

SOURCE: 28 FR 14394, Dec. 27, 1963, unless otherwise noted.

INTRODUCTION

§ 453.1 Scope and significance of this part.

(a) *Functions of the Department of Labor.* This part discusses the meaning and scope of section 502 of the Labor-Management Reporting and Disclosure Act of 1959[1] (hereinafter referred to as the Act), which requires the bonding of certain officials, representatives, and employees of labor organizations and of trusts in which labor organizations are interested. The provisions of section 502 are subject to the general investigatory authority of the Secretary of Labor, embodied in section 601 of the Act (and delegated by him to the Assistant Secretary), which empowers him to investigate whenever he believes it necessary in order to determine whether any person has violated or is about to violate any provisions of the Act (except Title I or amendments to other statutes made by section 505 or Title VII). The Department of Labor is also authorized, under the general provisions of section 607, to forward to the Attorney General, for appropriate action, any evidence of violations of section 502 developed in such investigations, as may be found to warrant criminal prosecution under the Act or other Federal law.

(b) *Purpose and effect of interpretations.* Interpretations of the Assistant Secretary with respect to the bonding provisions are set forth in this part to provide those affected by these provisions of the Act with "a practical

[1] 73 Stat. 536; 29 U.S.C. 502.

guide * * * as to how the office representing the public interest in its enforcement will seek to apply it." [2] The correctness of an interpretation can be determined finally and authoritatively only by the courts. It is necessary, however, for the Assistant Secretary to reach informed conclusions as to the meaning of the law to enable him to carry out his statutory duties of administration and enforcement. The interpretations of the Assistant Secretary contained in this part, which are issued upon the advice of the Solicitor of Labor, indicate the construction of the law which will guide him in performing his duties unless and until he is directed otherwise by authoritative rulings of the courts or unless and until he subsequently decides that a prior interpretation is incorrect. However, the omission to discuss a particular problem in this part, or in interpretations supplementing it, should not be taken to indicate the adoption of any position by the Assistant Secretary with respect to such problem or to constitute an administrative interpretation or practice.

(c) *Earlier interpretations superseded.* To the extent that prior opinions and interpretations under the Act, relating to the bonding of certain officials, representatives, and employees of labor organizations and of trusts in which labor organizations are interested, are inconsistent or in conflict with the principles stated in this part, they are hereby rescinded and withdrawn.

[28 FR 14394, Dec. 27, 1963, as amended at 50 FR 31309, Aug. 1, 1985]

Criteria for Determining Who Must Be Bonded

§ 453.2 Provisions of the statute.

(a) Section 502(a) requires that:

Every officer, agent, shop steward, or other representative or employee of any labor organization (other than a labor organization whose property and annual financial receipts do not exceed $5,000 in value), or of a trust in which a labor organization is interested, who handles funds or other property thereof shall be bonded to provide protection against loss by reason of acts of fraud or dishonesty on his part directly or through connivance with others.

(b) This section sets forth, in the above language and in its further provisions, the minimum requirements regarding the bonding of the specified personnel. There is no provision in the Act which precludes the bonding of such personnel in amounts exceeding those specified in section 502(a). Similarly, the Act contains no provision precluding the bonding of such personnel as are not required to be bonded by this section. Such excess coverage may be in any amount and in any form otherwise lawful and acceptable to the parties to such bonds.

[28 FR 14394, Dec. 27, 1963, as amended at 30 FR 14925, Dec. 2, 1965]

§ 453.3 Labor organizations within the coverage of section 502(a).

Any labor organization as defined in sections 3(i) and 3(j) of the Act [3] is a labor organization within the coverage of section 502(a) unless its property and annual financial receipts do not exceed $5,000 in value. The determination as to whether a particular labor organization is excepted from the application of section 502(a) is to be made at the beginning of each of its fiscal years on the basis of the total value of all its property at the beginning of, and its total financial receipts during, the preceding fiscal year of the organization.

§ 453.4 Trusts (in which a labor organization is interested) within the coverage of section 502(a).

Section 3(l) of the Act defines a "trust in which a labor organization is interested" as:

* * * a trust or other fund or organization (1) which was created or established by a labor organization, or one or more of the trustees or one or more members of the governing body of which is selected or appointed by a labor organization, and (2) a primary purpose of which is to provide benefits for the members of such labor organization or their beneficiaries.

[2] Skidmore v. Swift & Co., 323 U.S. 134, 138.

[3] See Part 451 of this chapter.

Both the language and the legislative history [4] make it clear that this definition covers pension funds, health and welfare funds, profit sharing funds, vacation funds, apprenticeship and training funds, and funds or trusts of a similar nature which exist for the purpose of, or have as a primary purpose, the providing of the benefits specified in the definition. This is so regardless of whether these trusts, funds, or organizations are administered solely by labor organizations, or jointly by labor organizations and employers, or by a corporate trustee, unless they were neither created or established by a labor organization nor have any trustee or member of the governing body who was selected or appointed by a labor organization.

§ 453.5 Officers, agents, shop stewards, or other representatives or employees of a labor organization.

With respect to labor organizations, the term "officer, agent, shop steward, or other representative" is defined in section 3(q) of the Act to include "elected officials and key administrative personnel, whether elected or appointed (such as business agents, heads of departments or major units, and organizers who exercise substantial independent authority)". Other individuals employed by a labor organization, including salaried non-supervisory professional staff, stenographic, and service personnel are "employees" and must be bonded if they handle [5] funds or other property of the labor organization.

§ 453.6 Officers, agents, shop stewards or other representatives or employees of a trust in which a labor organization is interested.

(a) *Officers, agents, shop stewards or other representatives.* While the definition of the collective term "Officer, agent, shop steward, or other representative" in section 3(q) of the Act is expressly applicable only "when used with respect to a labor organization," the use of this term in connection with trusts in which a labor organization is interested makes it clear that, in that connection, it refers to personnel of such trusts in positions similar to those enumerated in the definition. Thus, the term covers trustees and key administrative personnel of trusts, such as the administrator of a trust, heads of departments or major units, and persons in similar positions. It covers such personnel, including trustees, regardless of whether they are representatives of or selected by labor organizations, or representatives of or selected by employers,[6] and such personnel must be bonded if they handle funds or other property of the trust within the meaning of section 502(a).

(b) *Independent institutions not included.* The analogy to the definition of the term "officer, agent, shop steward, or other representative," when used with respect to a labor organization, shows that banks and other qualified financial institutions in which trust funds are deposited are not to be considered as "agents" or "representatives" of trusts within the meaning of section 502 and thus are not subject to the bonding requirement, even though they may also have administrative or management responsibilities with respect to such trusts. Similarly, the bonding requirement does not apply to brokers or other independent contractors who have con-

[4] Daily Cong. Rec., pp. 5858-59, Senate, April 23, 1959.

[5] For discussion of "handle", see § 453.8.

[6] See the contrast between section 308 of S. 1555 as passed by the Senate ("All officers, agents, representatives, and employees of any labor organization engaged in an industry affecting commerce who handle funds of such organization or of a trust in which such organization is interested shall be bonded * * *") and section 502 of the Act as finally enacted. The change between the two versions originated in the House Committee on Education and Labor. Prior to the reporting of the bill (H.R. 8342) by that Committee, a joint subcommittee of that Committee held extensive hearings, during the course of which witnesses including President Meany of the AFL-CIO criticized the bonding provision of the Senate bill on the ground that it required only union personnel of joint employer-union trusts to be bonded. (See Record of Hearings before a Joint Subcommittee of the Committee on Education and Labor, House of Representatives, 86th Congress, 1st Session, on H.R. 3540, H.R. 3302, H.R. 4473 and H.R. 4474, pp. 1493-94, 1979.

tracted with trusts for the performance of functions which are normally not carried out by officials or employees of such trusts such as the buying of securities, the performance of other investment functions, or the transportation of funds by armored truck.

(c) *Employees of a trust in which a labor organization is interested.* As in the case of labor organizations, all individuals employed by a trust in which a labor organization is interested are "employees," regardless of whether, technically, they are employed by the trust, by the trustees, by the trust administrator, or by trust officials in similar positions.

[28 FR 14394, Dec. 27, 1963, as amended at 50 FR 31311, Aug. 1, 1985]

§ 453.7 "Funds or other property" of a labor organization or of a trust in which a labor organization is interested.

The affirmative requirement for bonding the specified personnel is applicable only if they handle "funds or other property" of the labor organization or trust concerned. A consideration of the purpose of section 502 and a reading of the section as a whole, including provisions for fixing the amount of bonds, suffice to show that the term "funds or other property", as used in this section of the Act, encompasses more than cash alone but that it does not embrace all of the property of a labor organization or of a trust in which a labor organization is interested. The term does not include property of a relatively permanent nature, such as land, buildings, furniture, fixtures and office and delivery equipment used in the operations of a labor organization or trust. It does, however, include items in the nature of quick assets, such as checks and other negotiable instruments, government obligations and marketable securities, as well as cash, and other property held, not for use, but for conversion into cash or for similar purposes making it substantially equivalent to funds.

§ 453.8 Personnel who "handle" funds or other property.

(a) *General considerations.* Section 502(a) requires "every" person specified in its bonding requirement "who handles" funds or other property of the labor organization or trust to be bonded. It does not contain any exemption based on the amount of the funds or other property handled by particular personnel. Therefore, if the bonding requirement is otherwise applicable to such persons, the amount of the funds or the value of the property handled by them does not affect such applicability. In determining whether a person "handles" funds or other property within the meaning of section 502(a), however, it is important to consider the term "handles" in the light of the basic purpose which Congress sought to achieve by the bonding requirement and the language chosen to make that purpose effective. Thus, while it is clear that section 502(a) should be considered as representing the minimum requirements which Congress deemed necessary in order to insure the reasonable protection of the funds and other property of labor organizations and trusts within the coverage of the section, it is equally clear from the legislative history [7] and the language used that Congress was aware of cost considerations and did not intend to require unreasonable, unnecessary or duplicative bonding. In terms of these general considerations, more specific content may be assigned to the term "handles" by reference to the prohibition in section 502(a) against permitting any person not covered by an appropriate bond "to receive, handle, disburse, or otherwise exercise custody or control" of the funds or other property of a labor organization or of a trust in which a labor organization is interested. The phrase "receive, handle, disburse, or otherwise exercise custody or control" is not to be considered as expanding the scope of the term "handles" but rather as indicating facets of "handles" which in a specific prohibition, Congress believed should be clearly set forth.

[7] House Report No. 1147, 86th Congress, 1st Session, p. 35; Daily Cong. Record 16419, Senate, Sept. 3, 1959; Hearings Before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare on S. 505, S. 748, S. 76, S. 1002, S. 1137, and S. 1311, 86th Congress, 1st Session, p. 709.

(b) *Persons included generally.* The basic objective of section 502(a) is to provide reasonable protection of funds or other property rather than to insure against every conceivable possibility of loss. Accordingly, a person shall be deemed to be "handling" funds or other property, so as to require bonding under that section, whenever his duties or activities with respect to given funds or other property are such that there is a significant risk of loss by reason of fraud or dishonesty on the part of such person, acting either alone or in collusion with others.

(c) *Physical contact as criterion of "handling."* Physical dealing with funds or other property is, under the principles above stated, not necessarily a controlling criterion in every case for determining the persons who "handle" within the meaning of section 502(a). Physical contact with cash, checks or similar property generally constitutes "handling." On the other hand, bonding may not be required for office personnel who from time to time perform counting, packaging, tabulating or similar duties which involve physical contact with checks, securities, or other funds or property but which are performed under conditions that cannot reasonably be said to give rise to significant risks with respect to the receipt, safekeeping or disbursement of funds or property. This may be the case where significant risks of fraud or dishonesty in the performance of duties of an essentially clerical character are precluded by the closeness of the supervision provided or by the nature of the funds or other property handled.

(d) *"Handling" funds or other property without physical contact.* Personnel who do not physically handle funds or property may nevertheless "handle" within the meaning of section 502(a) where they have or perform significant duties with respect to the receipt, safekeeping or disbursement of funds or other property. For example, persons who have access to a safe deposit box or similar depository for the purpose of adding to, withdrawing, checking or otherwise dealing with its contents may be said to "handle" these contents within the meaning of section 502(a) even though they do not at any time during the year actually secure such access for such purposes. Similarly, those charged with general responsibility for the safekeeping of funds or other property such as the treasurer of a labor organization, should be considered as handling funds or other property. It should also be noted that the extent of actual authority to deal with funds or property may be immaterial where custody or other functions have been granted which create a substantial risk of fraud or dishonesty. Thus, if a bank account were maintained in the name of a particular officer or employee whose signature the bank were authorized to honor, it could not be contended that he did not "handle" funds merely because he had been forbidden by the organization or by his superiors to make deposits or withdrawals.

(e) *Disbursement of funds or other property.* It is clear from both the purpose and language of section 502(a) that personnel described in the section who actually disburse funds or other property, such as officers or trustees authorized to sign checks or persons who make cash disbursements, must be considered as handling such funds and property. Whether others who may influence, authorize or direct disbursements must also be considered to handle funds or other property can be determined only by reference to the specific duties or responsibilities of these persons in a particular labor organization or trust.

[28 FR 14394, Dec. 27, 1963, as amended at 30 FR 14925, Dec. 2, 1965]

§ 453.9 "Handling" of funds or other property by personnel functioning as a governing body.

(a)(1) *General considerations.* For many labor organizations and trusts special problems involving disbursements will be presented by those who, as trustees or members of an executive board or similar governing body, are, as a group, charged with general responsibility for the conduct of the business and affairs of the organization or trust. Often such bodies may approve contracts, authorize disburse-

ments, audit accounts and exercise similar responsibilities.

(2) It is difficult to formulate any general rule for such cases. The mere fact that a board of trustees, executive board or similar governing body has general supervision of the affairs of a trust or labor organization, including investment policy and the establishment of fiscal controls, would not necessarily mean that the members of this body "handle" the funds or other property of the organization. On the other hand, the facts may indicate that the board or other body exercises such close, day-to-day supervision of those directly charged with the handling of funds or other property that it might be unreasonable to conclude that the members of such board were not, as a group, also participating in the handling of such funds and property.[8] Also, whether or not the members of a particular board of trustees or executive board handle funds or other property in their capacity as such, certain of these members may hold other offices or have other functions involving duties directly related to the receipt, safekeeping or disbursement of the funds or other property of the organization so that it would be necessary that they be bonded irrespective of their board membership.

(b) *Nature of responsibilities as affecting "handling."* With respect to particular responsibilities of boards of trustees, executive boards and similar bodies in disbursing funds or other property, much would depend upon the system of fiscal controls provided in a particular trust or labor organization. The allocation of funds or authorization of disbursements for a particular purpose is not necessarily handling of funds within the meaning of the section. If the allocation or authorization merely permits expenditures by a disbursing officer who has responsibility for determining the validity or propriety of particular expenditures, then the action of the disbursing officer and not that of the board would constitute handling. But if pursuant to a direction of the board, the disbursing officer performed only ministerial acts without responsibility to determine whether the expenditures were valid or appropriate, then the board's action would constitute handling. In such a case, the absence of fraud or dishonesty in the acts of the disbursing officer alone would not necessarily prevent fraudulent or dishonest disbursements. The person or persons who are charged with or exercise responsibility for determining whether specific disbursements are bona fide, regular, and in accordance with the applicable constitution, trust instrument, resolution or other laws or documents governing the disbursement of funds or other property should be considered to handle such funds and property and be bonded accordingly.

[28 FR 14394, Dec. 27, 1963, as amended at 30 FR 14926, Dec. 2, 1965]

[8] As to group coverage, see § 453.16.

Scope of the Bond

§ 453.10 The statutory provision.

The statute requires that every covered person "shall be bonded to provide protection against loss by reason of acts of fraud or dishonesty on his part directly or through connivance with others."

[30 FR 14926, Dec. 2, 1965]

§ 453.11 The nature of the "duties" to which the bonding requirement relates.

The bonding requirement in section 502(a) relates only to duties of the specified personnel in connection with their handling of funds or other property to which this section refers. It does not have reference to the special duties imposed upon representatives of labor organizations by virtue of the positions of trust which they occupy, which are dealt with in section 501(a), and for which civil remedies for breach of the duties are provided in section 501(b). The fact that the bonding requirement is limited to personnel who handle funds or other property indicates the correctness of these conclusions. They find further support in the differences between sections 501(a) and 502(a) of the Act which sufficiently indicate that the scope of the two sections is not coextensive.

§ 453.12 Meaning of fraud or dishonesty.

The term "fraud or dishonesty" shall be deemed to encompass all those risks of loss that might arise through dishonest or fraudulent acts in handling of funds as delineated in §§ 453.8 and 453.9. As such, the bond must provide recovery for loss occasioned by such acts even though no personal gain accrues to the person committing the act and the act is not subject to punishment as a crime or misdemeanor, provided that within the law of the state in which the act is committed, a court would afford recovery under a bond providing protection against fraud or dishonesty. As usually applied under state laws, the term "fraud or dishonesty" encompasses such matters as larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, wrongful conversion, willful misapplication or any other fraudulent or dishonest acts resulting in financial loss.

[30 FR 14926, Dec. 2, 1965]

AMOUNT OF BONDS

§ 453.13 The statutory provision.

Section 502(a) of the Act requires that the bond of each "person" handling "funds or other property" who must be bonded be fixed "at the beginning of the organization's fiscal year * * * in an amount not less than 10 percentum of the funds handled by him and his predecessor or predecessors, if any, during the preceding fiscal year, but in no case more than $500,000." If there is no preceding fiscal year, the amount of each required bond is set at not less than $1,000 for local labor organizations and at not less than $10,000 for other labor organizations or for trusts in which a labor organization is interested.

§ 453.14 The meaning of "funds."

While the protection of bonds required under the Act must extend to any actual loss from the acts of fraud or dishonesty in the handling of "funds or other property" (§ 453.7), the amount of the bond depends upon the "funds" handled by the personnel bonded and their predecessors, if any. "Funds" as here used is not defined in the Act. As in the case of "funds or other property" discussed earlier in § 453.7, the term would not include property of a relatively permanent nature such as land, buildings, furniture, fixtures, or property similarly held for use in the operations of the labor organization or trust rather than as quick assets. In its normal meaning, however, "funds" would include, in addition to cash, items such as bills and notes, government obligations and marketable securities, and in a particular case might well include all the "funds or other property" handled during the year in the positions occupied by the particular personnel for whom the bonding is required. In any event, it is clear that bonds fixed in the amount of 10 percent or more of the total "funds or other property" handled by the occupants of such positions during the preceeding fiscal year would be in amounts sufficient to meet the statutory requirement. Of course, in situations where a significant saving in bonding costs might result from computing separately the amounts of "funds" and of "other property" handled, criteria for distinguishing particular items to be included in the quoted terms would prove useful. While the criteria to be applied in a particular case would depend on all the relevant facts concerning the specific items handled, it may be assumed as a general principle that at least those items which may be handled in a manner similar to cash and which involve a like risk of loss should be included in computing the amount of "funds" handled.

[30 FR 14926, Dec. 2, 1965]

§ 453.15 The meaning of funds handled "during the preceding fiscal year".

The funds handled by personnel required to be bonded and their predecessors during the course of a fiscal year would ordinarily include the total of whatever such funds were on hand at the beginning of the fiscal year plus any items received or added in the form of funds during the year for any reason, such as dues, fees and assessments, trust receipts, or items received as a result of sales, investments, rein-

vestments, or otherwise. It would not, however, be necessary to count the same item twice in arriving at the total funds handled by personnel during a year. Once an item properly within the category of "funds" had been counted as handled by personnel during a year, there would be no need to count it again should it subsequently be handled by the same personnel during the same year in some other connection.

§ 453.16 Funds handled by more than one person.

The amount of any required bond is determined by the total funds handled during a fiscal year by each "person" bonded, and any predecessors of such "person". The term "person", however, is defined in section 3(d) of the Act to include "one or more" of the various individuals or entities there listed, so that there may be numerous instances where the bond of a "person" may include several individuals. Wherever this is the case, the amount of the bond for that "person" would, of course, be based on the total funds handled by all who comprise the "person" included in the bond, without regard to the precise extent to which any particular individual might have handled such funds. This would be the situation, for example, in many cases of joint or group activity in the performance of a single function. It would also be true where various individuals performed the same type of function for an organization, even though they acted independently of one another. There would, however, be no objection to bonding each individual separately, and fixing the amount of his bond on the basis of the total funds which he individually handled during the year.

§ 453.17 Term of the bond.

The amount of any required bond must in each instance be based on funds handled "during the preceding fiscal year," and must be fixed "at the beginning" of an organization's fiscal year—that is, as soon after the date when such year begins as the necessary information from the preceding fiscal year can practicably be ascertained. This does not mean, however, that a new bond must be obtained each year. There is nothing in the Act which prohibits a bond for a term longer than one year, with whatever advantages such a bond might offer by way of a lower premium, but at the beginning of each fiscal year during its term the bond must be in at least the requisite amount. If it is below that level at that time for any reason, it would then be necessary either to modify the existing bond to increase it to the proper amount or to obtain a supplementary bond. In either event, the terms upon which this could best be done would be left to the parties directly concerned.

Form of Bonds

§ 453.18 Bonds "individual or schedule in form".

(a) *General consideration.* In addition to such substantive matters as the personnel who must be bonded and the scope and the amount of the prescribed bonds, which have been discussed previously, the form of the bonds is the subject of a specific provision of section 502(a). Under this provision, a bond meeting the substantive requirements of the section may be either "individual or schedule in form." These terms are not specially defined and could be descriptive of a variety of possible forms of bonds. According to trade usage, an individual bond is a single bond covering a single named individual to a designated amount, and bonds "schedule in form" may include either name schedule or position schedule bonds. A name schedule bond is typically a single bond covering a series or list of named individuals, each of whom is bonded separately to a designated amount. A position schedule bond is typically a single bond providing coverage with respect to any occupant or holder of one or more specified positions during the term of the bond, each office or position being covered to a designated amount. In a statute relating to trade or commerce, it is frequently helpful to consider whatever trade or commercial usages may have developed with

respect to the statutory terms. [9] References to individual, schedule and position schedule bonds may be found in other acts of Congress and indicate a clear awareness of trade usages and terminology in this field. [10]

(b) *Particular forms of bonds.* If the phrase "individual or schedule in form" is considered in light of the trade usages, section 502(a) at least permits bonds which are individual, name schedule or position schedule in form. Of course, section 502(a) does not require any particular type of individual or schedule bonds where different types exist or may be developed. It could not be said, for example, that a bond which schedules positions according to similarities in duties, risks, or required amounts of coverage is not "schedule in form" within the meaning of section 502(a) merely because the particular form of scheduling involved was not employed in bonds current at the time the section became law. A more specific illustration would be a bond scheduling shop stewards as a group because of the similar duties they perform in collecting dues, or members of an executive board as a group because of the fact that duties are imposed upon the board as such. A bond of this type would be "schedule in form" within the meaning of section 502(a) and, assuming adequacy of amount and coverage of all persons whom it is necessary to bond, such a bond would be in conformity with the statute. Also, a bond scheduling positions or groups of positions according to amounts of funds handled by occupants of the positions could be viewed as "schedule in form."

(c) *Additional bonding.* Section 502(a) neither prevents additional bonding beyond that required by its terms nor prescribes the form in which such additional coverage may be taken. Thus, so long as a particular bond is schedule in form as to the personnel required to be bonded and schedules coverage of these persons in at least the minimum required amount, additional coverage either as to personnel or amount may be taken in any form either in the same or in separate bonds. A bond which provided name or position schedule coverage for all persons required to be bonded under section 502(a), each scheduled person or position being bonded in at least the required minimum amount, would clearly be "schedule in form" within the meaning of section 502(a) regardless of the extent or form of additional schedule or blanket coverage provided in the same bond.

§ 453.19 The designation of the "insured" on bonds.

Since section 502 is intended to protect the funds or other property of labor organizations and trusts in which labor organizations are interested, bonds under this section should allow for enforcement or recovery for the benefit of the labor organization or trust concerned by those ordinarily authorized to act for it in such matters. For example, in the case of a local labor organization, a bond would not be appropriate under section 502 if it protected only the interests of a national or international labor organization with which the local labor organization is affiliated or if it designated as the insured only some particular officer of the organization who does not legally represent it in similar formal instruments.

Qualified Agents, Brokers, and Surety Companies for the Placing of Bonds

§ 453.20 Corporate sureties holding grants of authority from the Secretary of the Treasury.

The provisions of section 502(a) require that any surety company with which a bond is placed pursuant to that section must be a corporate surety which holds a grant of authority from the Secretary of the Treasury under the Act of July 30, 1947 (6 U.S.C. 6-13), as an acceptable surety on Federal bonds. That Act provides, among other things, that in order for a surety company to be eligible for such grant of authority, it must be incorporated under the laws of the United States or of any State and the

[9] See 2 Sutherland, Statutory Construction (3d ed. 1943) § 4919.

[10] Act of August 24, 1954, 68 Stat. 335, 12 U.S.C. 1766(g); Act of August 9, 1955, 69 Stat. 618, 6 U.S.C. 14.

Secretary of the Treasury shall be satisfied of certain facts relating to its authority and capitalization. Such grants of authority are evidenced by Certificates of Authority which are issued by the Secretary of the Treasury and which expire on the June 30 following the date of their issuance. A list of the companies holding such Certificates of Authority is published annually in the FEDERAL REGISTER, usually in July. Changes in the list, occurring between July 1 and June 30, either by addition to or removal from the list of companies, are also published in the FEDERAL REGISTER following each such change.

[28 FR 14394, Dec. 27, 1963, as amended at 50 FR 31311, Aug. 1, 1985]

§ 453.21 Interests held in agents, brokers, and surety companies.

(a) Section 502(a) of the Act prohibits the placing of bonds required therein through any agent or broker or with any surety company in which any labor organization or any officer, agent, shop steward, or other representative of a labor organization has any direct or indirect interest. The purpose of this provision, as shown by its legislative history, is to insure against the existence of any "financial or other influential" interests which would affect the objectivity of the action of agents, brokers, or surety companies in bonding the personnel specified in the section.[11] It appears, therefore, that is was the intent of Congress to prevent the placing of bonds through agents or brokers, and with surety companies, in which any labor organization or any officer, agent, shop steward, or other representative of a labor organization holds more than a nominal interest.

(b) Since the statute provides that either a direct or indirect interest by a labor organization or by the specified persons may disqualify an agent, broker, or surety company from having a bond placed through or with it, the disqualification would be effective if a labor organization or any of the specified persons are in a position to influence or control the activities or operations of such brokers, agents, or surety companies, by virtue of interests held either directly by them or by relatives or third parties which they own or control. The question of whether the relationship between the labor organization or the specified persons on the one hand, and another party or parties holding an interest in a broker, agent, or surety company on the other hand, is so close as to put the former in a position to influence or control the activities or operations of such broker, agent, or surety company through the latter, presents a question of fact which must necessarily be determined in each case in the light of all the pertinent circumstances.

(c) It is also to be noted that the statute does not appear to restrict the disqualification to cases in which a direct or indirect interest is held by a labor organization as a whole, or by a substantial number of officers, agents, shop stewards, or other representatives of a labor organization, but provides for the disqualification also in cases where any one officer, agent, shop steward, or other representative of a labor organization holds such an interest.

[11] Daily Cong. Rec. 9114, Senate, June 8, 1959; Record of Hearings before a Joint Subcommittee of the Committee on Education and Labor, House of Representatives, 86th Congress, 1st Session, on H.R. 3540, H.R. 3302, H.R. 4473 and H.R. 4474, p. 1607.

MISCELLANEOUS PROVISIONS

§ 453.22 Prohibition of certain activities by unbonded persons.

(a) Section 502(a) provides that persons who are not covered by bonds as required by that section shall not be permitted to receive, handle, disburse, or otherwise exercise custody or control of the funds or other property of a labor organization or of a trust in which a labor organization is interested. This prohibits personnel who are required to be bonded, as explained in § 453.8 from performing any of these acts without being covered by the required bonds. In addition, this provision makes it unlawful for any person with power to do so to delegate or assign the duties of receiving, handling, disbursing, or otherwise exercising custody or control of such funds or property to any person who is not

bonded in accordance with the provisions of section 502(a).

(b) The legislative history of the Act indicates, however, that it was not the intent of Congress to make compliance with the bonding requirements of section 502(a) a condition on the right of banks or other financial institutions to serve as the depository of the funds of labor organizations or trusts. Similarly, it appears that the provisions of that section do not require the bonding of brokers or other independent contractors who have contracted with labor organizations or trusts for the performance of functions which are normally not carried out by such labor organizations' or trusts' own officials or employees, such as the buying of securities, the performance of other investment functions, or the transportation of funds by armored truck. [12]

§ 453.23 Persons becoming subject to bonding requirements during fiscal year.

Considering the purpose of section 502, the language of the prohibition should be considered to apply to persons who because of election, employment or change in duties begin to handle funds or other property during the course of a particular fiscal year. Bonds should be secured for such persons, in an amount based on the funds handled by their predecessors during the preceding fiscal year, before they are permitted to engage in any of the fund-handling activities referred to in the prohibition, unless coverage with respect to such persons is already provided by bonds in force meeting the requirements of section 502(a).

§ 453.24 Payment of bonding costs.

The Act does not prohibit payment of the cost of the bonds, required by section 502(a), by labor organizations or by trusts in which a labor organization is interested. The decision whether such costs are to be borne by the labor organization or trust or by the bonded person is left to the duly authorized discretion and agreement of the parties concerned in each case.

§ 453.25 Effective date of the bonding requirement.

While the bonding provision in section 502(a) became effective on September 14, 1959, its requirement for obtaining bonds does not become applicable to a labor organization or a trust in which a labor organization is interested, or to the personnel of any such organization, until the subsequent date when such organization's next fiscal year begins. This is so because the Act requires each such bond to be fixed at the beginning of the organization's fiscal year in an amount based on funds handled in the preceding fiscal year, and it could not well have been intended that the obtaining of a bond would be necessary in advance of the time when it would be possible to meet this requirement.

§ 453.26 Powers of the Secretary of Labor to exempt.

Section 502(a) of the Act provides that when in the opinion of the Secretary of Labor a labor organization has made other bonding arrangements which would provide the protection required at comparable cost or less, he may exempt such labor organization from placing a bond through a surety company holding a grant of authority from the Secretary of the Treasury under the Act of July 30, 1947 (6 U.S.C. 6-13), as acceptable surety on federal bonds.

[30 FR 14926, Dec. 2, 1965]

[12] See § 453.6(b).

SUBCHAPTER B—STANDARDS OF CONDUCT

EDITORIAL NOTE: Nomenclature changes affecting this Subchapter appear at 50 FR 31311, Aug. 1, 1985.

PART 457—GENERAL

Subpart A—Purpose and Scope

Sec.
457.1 Purpose and scope.

Subpart B—Meaning of Terms as Used in This Subchapter

457.10 CSRA; FSA; LMRDA.
457.11 Agency, employee, labor organization, dues, Department, activity.
457.12 Authority; Board.
457.13 Assistant Secretary.
457.14 Standards of conduct for labor organizations.
457.15 Area Administrator.
457.16 Director.
457.17 Administrative Law Judge.
457.18 Chief Administrative Law Judge.
457.19 Party.
457.20 Intervenor.

AUTHORITY: 5 U.S.C. 7120, 7134; 22 U.S.C. 4117.

SOURCE: 50 FR 31311, AUG. 1, 1985, UNLESS OTHERWISE NOTED.

Subpart A—Purpose and Scope

§ 457.1 Purpose and scope.

The regulations contained in this subchapter are designed to implement 5 U.S.C. 7120 and 22 U.S.C. 4117, which relate to the standards of conduct for labor organizations in the federal sector set forth in Title VII of the Civil Service Reform Act of 1978 and Chapter 10 of the Foreign Service Act of 1980. They prescribe procedures and basic principles which the Assistant Secretary of Labor will utilize in effectuating the standards of conduct required of labor organizations composed of federal government employees that are covered by these Acts. (Regulations implementing the other provisions of Title VII of the Civil Service Reform Act are issued by the Federal Labor Relations Authority, the General Counsel of the Federal Labor Relations Authority, and the Federal Service Impasses Panel in Title 5 of the Code of Federal Regulations. Regulations implementing the other provisions of Chapter 10 of the Foreign Service Act are issued by the Foreign Service Labor Relations Board, the Federal Labor Relations Authority, the General Counsel of the Federal Labor Relations Authority, and the Foreign Service Impasse Disputes Panel in Title 22 of the Code of Federal Regulations.)

Subpart B—Meaning of Terms as Used in This Chapter

§ 457.10 CSRA; FSA; LMRDA.

"CSRA" means the Civil Service Reform Act of 1978; "FSA" means the Foreign Service Act of 1980; "LMRDA" means the Labor-Management Reporting and Disclosure Act of 1959, as amended.

§ 457.11 Agency, employee, labor organization, dues, Department, activity.

"Agency," "employee," "labor organization," and "dues," when used in connection with the CSRA, have the meanings set forth in 5 U.S.C. 7103. "Employee," "labor organization," and "dues," when used in connection with the FSA, have the meanings set forth in 22 U.S.C. 4102; "Department," when used in connection with the FSA, means the Department of State, except that with reference to the exercise of functions under the FSA with respect to another agency authorized to utilize the Foreign Service personnel system, such term means that other agency. "Activity" means any facility, organizational entity, geographical subdivision or combination thereof of an agency.

§ 457.12 Authority; Board.

"Authority" means the Federal Labor Relations Authority as described in the CSRA, 5 U.S.C. 7104 and 7105; "Board" means the Foreign Service Labor Relations Board as described in the FSA, 22 U.S.C. 4106(a).

§ 457.13 Assistant Secretary.

"Assistant Secretary" means the Assistant Secretary of Labor for Labor-Management Standards.[1]

§ 457.14 Standards of conduct for labor organizations.

"Standards of conduct for labor organizations" shall have the meaning as set forth in the CSRA, 5 U.S.C. 7120 and the FSA, 22 U.S.C. 4117, and amplified in Part 458 of this subchapter.

§ 457.15 Area Administrator.

"Area Administrator" means the Administrator of an area office within an area of the Office of Labor-Management Standards, with geographical boundaries as fixed by the Assistant Secretary.

§ 457.16 Director.

"Director" means the Director of the Office of Elections, Trusteeships and International Union Audits within the Office of Labor-Management Standards of the Department of Labor.

§ 457.17 Administrative Law Judge.

"Administrative Law Judge" means the Chief Administrative Law Judge or any Administrative Law Judge designated by the Chief Administrative Law Judge to conduct a hearing in cases under 5 U.S.C. 7120 or 22 U.S.C. 4117 as implemented by Part 458 of this subchapter and such other matters as may be assigned.

§ 457.18 Chief Administrative Law Judge.

"Chief Administrative Law Judge" means the Chief Administrative Law Judge, U.S. Department of Labor, Washington, D.C. 20210.

[1] Pursuant to Secretary of Labor's Order 3-84 dated May 3, 1984 (49 FR 20578), the Assistant Secretary for Labor-Management Standards (head of the Office of Labor-Management Standards) has the responsibility and authority under the standards of conduct provisions of the CSRA and the FSA and the implementing regulations that were formerly held by the Assistant Secretary for Labor-Management Relations, a position which has been abolished.

§ 457.19 Party.

"Party" means any person, employee, group of employees, labor organization, Department, activity or agency: (a) Filing a complaint, petition, request, or application; (b) named in a complaint, petition, request, or application; or (c) whose intervention in a proceeding has been permitted or directed by the Assistant Secretary, Chief Administrative Law Judge, or Administrative Law Judge, as the case may be.

§ 457.20 Intervenor.

"Intervenor" means a party in a proceeding whose intervention has been permitted or directed by the Assistant Secretary, Chief Administrative Law Judge, or Administrative Law Judge, as the case may be.

PART 458—STANDARDS OF CONDUCT

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AUTHORITY: 5 U.S.C. 7105, 7111, 7120, 7134; 22 U.S.C. 4107, 4111, 4117.

SOURCE: 45 FR 15158, Mar. 7, 1980, unless otherwise noted. Redesignated at 50 FR 31311, Aug. 1, 1985.

Subpart A—Substantive Requirements Concerning Standards of Conduct

§ 458.1 General.

The term "LMRDA" means the Labor-Management Reporting and Disclosure Act of 1959, as amended (29 U.S.C. 401 et seq.). Unless otherwise provided in this part or in the CSRA or FSA, any term in any section of the LMRDA which is incorporated into this part by reference, and any term in this part which is also used in the LMRDA, shall have the meaning which that term has under the LMRDA, unless the context in which it is used indicates that such meaning is not applicable. In applying the standards contained in this subpart the Assistant Secretary will be guided by the interpretations and policies followed by the Department of Labor in applying the provisions of the LMRDA and by applicable court decisions.

§ 458.2 Bill of rights of members of labor organizations.

(a)(1) *Equal rights.* Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in

such organization's constitution and bylaws.

(2) *Freedom of speech and assembly.* Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments or opinions; and to express at meetings of the labor organization his views upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: *Provided,* That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

(3) *Dues, initiation fees, and assessments.* Except in the case of a federation of national or international labor organizations, the rates of dues and initiation fees payable by members of any labor organization in effect on the date this section is published shall not be increased, and no general or special assessment shall be levied upon such members, except:

(i) In the case of a local organization, (A) by majority vote by secret ballot of the members in good standing voting at a general or special membership meeting, after reasonable notice of the intention to vote upon such question, or (B) by majority vote of the members in good standing voting in a membership referendum conducted by secret ballot; or

(ii) In the case of a labor organization, other than a local labor organization or a federation of national or international labor organizations, (A) by majority vote of the delegates voting at a regular convention, or at a special convention of such labor organization held upon not less than 30 days written notice to the principal office of each local or constituent labor organization entitled to such notice, or (B) by majority vote of the members in good standing of such labor organization voting in a membership referendum conducted by secret ballot, or (C) by majority vote of the members of the executive board or similar governing body of such labor organization, pursuant to express authority contained in the constitution and bylaws of such labor organization: *Provided,* That such action on the part of the executive board or similar governing body shall be effective only until the next regular convention of such labor organization.

(4) *Protection of the right to sue.* No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceedings, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: *Provided,* That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a 4-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof.

(5) *Safeguards against improper disciplinary action.* (a) No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined, except for nonpayment of dues by such organization or by any officer thereof unless such member has been (i) served with written specific charges; (ii) given a reasonable time to prepare his defense; (iii) afforded a full and fair hearing.

(b) Any provision of the constitution and bylaws of any labor organization which is inconsistent with the provisions of this section shall not be a defense to any proceeding instituted against the labor organization under this part or under the CSRA or FSA.

(c) Nothing contained in this section shall limit the rights and remedies of any member of a labor organization under any State or Federal law or before any court or other tribunal, or under the constitution and bylaws of any labor organization.

(d) It shall be the duty of the secretary or corresponding principal officer

of each labor organization, in the case of a local labor organization, to forward a copy of each agreement made by such labor organization with an agency, Department or activity to any employee who requests such a copy and whose rights as such employee are directly affected by such agreement, and in the case of a labor organization other than a local labor organization, to forward a copy of any such agreement to each constituent unit which has members directly affected by such agreement; and such officer shall maintain at the principal office of the labor organization of which he is an officer, copies of any such agreement made or received by such labor organization, which copies shall be available for inspection by any member or by any employee whose rights are affected by such agreement. An employee's rights under this paragraph shall be enforceable in the same manner as the rights of a member.

[45 FR 15158, Mar. 7, 1980. Redesignated at 50 FR 31311, and amended at 50 FR 31312, Aug. 1, 1985]

§ 458.3 Application of LMRDA labor organization reporting requirements.

The reporting provisions of Parts 402, 403, and 408 of this chapter shall apply to labor organizations subject to the requirements of the CSRA or FSA.

Trusteeships

§ 458.26 Purposes for which a trusteeship may be established.

Trusteeships shall be established and administered by a labor organization over a subordinate body only in accordance with the constitution and bylaws of the organization which has assumed trusteeship over the subordinate body and for the purpose of (a) correcting corruption or financial malpractice, (b) assuring the performance of negotiated agreements or other duties of a representative of employees, (c) restoring democratic procedures, or (d) otherwise carrying out the legitimate objects of such labor organization.

§ 458.27 Prohibited acts relating to subordinate body under trusteeship.

During any period when a subordinate body of a labor organization is in trusteeship, (a) the votes of delegates or other representatives from such body in any convention or election of officers of the labor organization shall not be counted unless the representatives have been chosen by secret ballot in an election in which all the members in good standing of such subordinate body were eligible to participate; and (b) no current receipts or other funds of the subordinate body except the normal per capita tax and assessments payable by subordinate bodies not in trusteeship shall be transferred directly or indirectly to the labor organization which has imposed the trusteeship; *Provided, however,* That nothing contained in this section shall prevent the distribution of the assets of a labor organization in accordance with its constitution and bylaws upon the bona fide dissolution thereof.

458.28 Presumption of validity.

In any proceeding involving § 458.26, a trusteeship established by a labor organization in conformity with the procedural requirements of its constitution and bylaws and authorized or ratified after a fair hearing either before the executive board or before such other body as may be provided in accordance with its constitution and bylaws shall be presumed valid for a period of 18 months from the date of its establishment and shall not be subject to attack during such period except upon clear and convincing proof that the trusteeship was not established or maintained in good faith for purposes allowable under § 458.26. After the expiration of 18 months the trusteeship shall be presumed invalid in any such proceeding, unless the labor organization shall show by clear and convincing proof that the continuation of the trusteeship is necessary for a purpose allowable under § 458.26.

Elections

§ 458.29 Election of officers.

Every labor organization subject to the CSRA or FSA shall conduct peri-

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odic elections of officers in a fair and democratic manner. All elections of officers shall be governed by the standards prescribed in sections 401 (a), (b), (c), (d), (e), (f) and (g) of the LMRDA to the extent that such standards are relevant to elections held pursuant to the provisions of 5 U.S.C. 7120 or 22 U.S.C. 4117 .

[45 FR 15158, Mar. 7, 1980; 45 FR 28322, Apr. 29, 1980. Redesignated at 50 FR 31311, and amended at 50 FR 31312, Aug. 1, 1985]

ADDITIONAL PROVISIONS APPLICABLE

§ 458.30 Removal of elected officers.

When an elected officer of a local labor organization is charged with serious misconduct and the constitution and bylaws of such organization do not provide an adequate procedure meeting the standards of § 417.2(e) of this chapter for removal of such officer, the labor organization shall follow a procedure which meets those standards. A labor organization which has adequate procedures in its constitution and bylaws shall follow those procedures.

[45 FR 15158, Mar. 7, 1980. Redesignated at 50 FR 31311, and amended at 50 FR 31312, Aug. 1, 1985]

§ 458.31 Maintenance of fiscal integrity in the conduct of the affairs of labor organizations.

The standards of fiduciary responsibility prescribed in section 501(a) of the LMRDA are incorporated into this subpart by reference and made a part hereof.

§ 458.32 Provision for accounting and financial controls.

Every labor organization shall provide accounting and financial controls necessary to assure the maintenance of fiscal integrity.

§ 458.33 Prohibition of conflicts of interest.

(a) No officer or agent of a labor organization shall, directly or indirectly through his spouse, minor child, or otherwise (1) have or acquire any pecuniary or personal interest which would conflict with his fiduciary obligation to such labor organization, or (2) engage in any business or financial transaction which conflicts with his fiduciary obligation.

(b) Actions prohibited by paragraph (a) of this section include, but are not limited to, buying from, selling, or leasing directly or indirectly to, or otherwise dealing with the labor organization, its affiliates, subsidiaries, or trusts in which the labor organization is interested, or having an interest in a business any part of which consists of such dealings, except bona fide investments of the kind exempted from reporting under section 202(b) of the LMRDA. The receipt of salaries and reimbursed expenses for services actually performed or expenses actually incurred in carrying out the duties of the officer or agent is not prohibited.

§ 458.34 Loans to officers or employees.

No labor organization shall directly or indirectly make any loan to any officer or employee of such organization which results in a total indebtedness on the part of such officer or employee to the labor organization in excess of $2,000.

§ 458.35 Bonding requirements.

Every officer, agent, shop steward, or other representative or employee of any labor organization subject to the CSRA or FSA (other than a labor organization whose property and annual financial receipts do not exceed $5,000 in value), or of a trust in which a labor organization is interested, who handles funds or other property thereof shall be bonded in accordance with the principles of section 502(a) of the LMRDA. In enforcing this requirement the Assistant Secretary will be guided by the interpretations and policies followed by the Department of Labor in applying the provisions of section 502(a) of the LMRDA and by applicable court decisions.

[45 FR 15158, Mar. 7, 1980; 45 FR 28322, Apr. 29, 1980. Redesignated at 50 FR 31311, Aug. 1, 1985]

§ 458.36 Prohibitions against certain persons holding office or employment.

The prohibitions against holding office or employment in a labor organization contained in section 504(a) of the LMRDA are incorporated into this

subpart by reference and made a part hereof. The prohibitions shall also be applicable to any person who has been convicted of, or who has served any part of a prison term resulting from his conviction of, violating 18 U.S.C. 1001 by making a false statement in any report required to be filed pursuant to this subpart, or who has been determined by the Assistant Secretary after an appropriate proceeding pursuant to §§ 458.66 through 458.92 to have willfully violated § 458.27: *Provided, however,* That the Assistant Secretary or such other person as he may designate may exempt a person from the prohibition against holding office or employment or may reduce the period of the prohibition where he determines that it would not be contrary to the purposes of the CSRA or the FSA and this section to permit a person barred from holding office or employment to hold such office or employment.

[45 FR 15158, Mar. 7, 1980. Redesignated at 50 FR 31311, and amended at 50 FR 31312, Aug. 1, 1985]

§ 458.37 Prohibition of certain discipline.

No labor organization or any officer, agent, shop steward, or other representative or any employee thereof shall fine, suspend, expel, or otherwise discipline any of its members for exercising any right to which he is entitled under the provisions of the CSRA or FSA or this subchapter.

§ 458.38 Deprivation of rights under the CSRA or FSA by violence or threat of violence.

No labor organization or any officer, agent, shop steward, or other representative or any employee thereof shall use, conspire to use, or threaten to use force or violence to restrain, coerce, or intimidate, or attempt to restrain, coerce, or intimidate any member of a labor organization for the purpose of interfering with or preventing the exercise of any right to which he is entitled under the provisions of the CSRA or FSA or of this subchapter.

Subpart B—Proceedings for Enforcing Standards of Conduct

§ 458.50 Investigations.

(a) When he believes it necessary in order to determine whether any person has violated or is about to violate any provision of §§ 458.26 through 458.30, the Director may cause an investigation to be conducted.

(b) When he believes it necessary in order to determine whether any person has violated or is about to violate any provision of this part (other than §§ 458.2, 458.26 through 458.30 or 458.37), an Area Administrator may conduct an investigation.

(c) The authority to investigate possible violations of this part (other than §§ 458.2 or 458.37) shall not be contingent upon receipt of a complaint.

[50 FR 31312, Aug. 1, 1985]

§ 458.51 Inspection of records and questioning.

In connection with such investigation the Director or an Area Administrator or his representative may inspect such records and question such persons as he may deem necessary to enable him to determine the relevant facts. Every labor organization, its officers, employees, agents, or representatives shall cooperate fully in any investigation and shall testify and produce the records or other documents requested in connection with the investigation. This section shall be enforced in accordance with the procedures in §§ 458.66 through 458.92.

[45 FR 15158, Mar. 7, 1980. Redesignated at 50 FR 31311, and amended at 50 FR 31312, Aug. 1, 1985]

§ 458.52 Report of investigation.

The Director may report to interested persons concerning any matter which he deems to be appropriate as a result of an investigation of possible violations of §§ 458.26 through 458.30. The Area Administrator may report to interested persons concerning any matter which he deems to be appropriate as a result of an investigation of possible violations of any provision of

this part (other than §§ 458.2, 458.26 through 458.30 and 458.37).

[50 FR 31312, Aug. 1, 1985]

§ 458.53 Filing of complaints.

A complaint alleging violations of this part may be filed with any area office, or any other office of the Office of Labor-Management Standards.

[45 FR 15158, Mar. 7, 1980. Redesignated at 50 FR 31311, and amended at 50 FR 31313, Aug. 1, 1985]

Procedures Involving Bill of Rights or Prohibited Discipline

§ 458.54 Complaints alleging violations of § 458.2, Bill of rights of members of labor organization or § 458.37, prohibition of certain discipline.

Any member of a labor organization whose rights under the provisions of § 458.2 or § 458.37 are alleged to have been infringed or violated, may file a complaint in accordance with § 458.53: *Provided, however,* That such member may be required to exhaust reasonable hearing procedures (but not to exceed a 4-month lapse of time) within such organization.

[45 FR 15158, Mar. 7, 1980; 45 FR 28322, Apr. 29, 1980. Redesignated at 50 FR 31311, Aug. 1, 1985]

§ 458.55 Content of complaint.

(a) The complaint shall contain appropriate identifying information and a clear and concise statement of the facts constituting the alleged violation.

(b) The complainant shall submit with his complaint a statement setting forth the procedures, if any, invoked to remedy the alleged violation, including the dates when such procedures were invoked and copies of any written ruling or decision which he has received.

§ 458.56 Service on respondent.

Upon the filing of a complaint, a copy of the complaint shall be served upon the respondent, and a written statement of such service shall be furnished to the Area Administrator.

§ 458.57 Additional information and report.

Upon the filing of a complaint pursuant to §§ 458.54 through 458.56, the Area Administrator shall obtain such additional information as he deems necessary, including the positions of the parties and any offers of settlement.

[45 FR 15158, Mar. 7, 1980. Redesignated at 50 FR 31311, and amended at 50 FR 31313, Aug. 1, 1985]

§ 458.58 Dismissal of complaint.

If the Area Administrator determines that a reasonable basis for the complaint has not been established, or that an offer of settlement satisfactory to the complainant has been made, he may dismiss the complaint. If he dismisses the complaint, he shall furnish the complainant with a written statement of the grounds for dismissal, sending a copy of the statement to the respondent.

[45 FR 15158, Mar. 7, 1980; 45 FR 28322, Apr. 29, 1980. Redesignated at 50 FR 31311, and amended at 50 FR 31313, Aug. 1, 1985]

§ 458.59 Review of dismissal.

The complainant may obtain a review of a dismissal by filing a request for review with the Assistant Secretary within fifteen (15) days of service of the notice of dismissal. A copy of such request shall be served on the Area Administrator and the respondent, and a statement of service shall be filed with the Assistant Secretary. The request for review shall contain a complete statement of the facts and reasons upon which a request is based.

§ 458.60 Actionable complaint.

If it appears to the Area Administrator that there is a reasonable basis for the complaint, and that no offer of settlement satisfactory to the complainant has been made, he shall refer the matter to the Chief Administrative Law Judge, U.S. Department of Labor, for the issuance of a notice of hearing as set forth in § 458.69.

§ 458.61 Transfer and consolidation of cases.

In any matter arising pursuant to the regulations in this subchapter, whenever it appears necessary in order to effectuate the purposes of the CSRA or FSA or to avoid unnecessary costs or delay, the Area Administrator may consolidate cases within his own area or may transfer such cases to any other area, for the purpose of consolidation with any proceedings which may have been instituted in, or transferred to, such area.

[45 FR 15158, Mar. 7, 1980; 45 FR 28322, Apr. 29, 1980. Redesignated at 50 FR 31311, Aug. 1, 1985]

§ 458.62 Hearing procedures.

The proceedings following issuance of the notice of hearing shall be as provided in §§ 458.69 through 458.92 of this part.

PROCEDURES INVOLVING ELECTION OF OFFICERS

§ 458.63 Complaints alleging violations of § 458.29, election of officers.

(a) A member of a labor organization may file a complaint alleging violations of § 458.29 within 1 calendar month after he has (1) exhausted the remedies available under the constitution and bylaws of the labor organization and of any parent body, or (2) invoked such available remedies without obtaining a final decision within 3 calendar months of such invocation.

(b) The complaint shall contain a clear and concise statement of the facts constituting the alleged violation(s), the remedies which have been invoked under the constitution and bylaws of the labor organization and when such remedies were invoked.

(c) The complainant shall submit with his complaint a copy of any ruling or decision he has received in connection with the subject matter of his complaint.

§ 458.64 Investigations; dismissal of complaint.

(a) If it is determined after preliminary inquiry that a complaint is deficient in any of the following respects, the Area Administrator shall conduct no investigation: (1) The complainant is not a member of the labor organization which conducted the election being challenged; (2) the labor organization is not subject to the CSRA or FSA; (3) the election was not a regular periodic election of officers; (4) the allegations, if true, do not constitute a violation or violations of § 458.29; (5) the complainant has not complied with the requirements of § 458.63(a).

(b) If investigation discloses (1) that there has been no violation or (2) that a violation has occurred but could not have affected the outcome or (3) that a violation has occurred but has been remedied, the Director shall issue a determination dismissing the complaint and stating the reasons for his action.

(c) A determination dismissing the complaint may be reviewed by the Assistant Secretary, but only on the basis of deciding whether the Director's decision was arbitrary and capricious. The request for review must be made within fifteen (15) days after service of notice of dismissal.

§ 458.65 Procedures following actionable complaint.

(a) If the Director concludes that there is probable cause to believe that a violation has occurred which may have affected the outcome and which has not been remedied, he shall proceed in accordance with §§ 458.66 through 458.92.

(b) The challenged election shall be presumed valid pending a final decision thereon by the Assistant Secretary, and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

(c) When the Director supervises an election pursuant to an order of the Assistant Secretary issued under § 458.70 or § 458.91, he shall certify to the Assistant Secretary the names of the persons elected. The Assistant Secretary shall thereupon issue an order declaring such persons to be the officers of the labor organization.

[45 FR 15158, Mar. 7, 1980. Redesignated at 50 FR 31311, and amended at 50 FR 31313, Aug. 1, 1985]

OTHER ENFORCEMENT PROCEDURES

§ 458.66 Procedures for institution of enforcement proceedings.

(a) Whenever it appears to the Director that a violation of any provision of §§ 458.26 through 458.30 has occurred and has not been remedied, he shall immediately notify any appropriate person and labor organization. Within fifteen (15) days following receipt of such notification, any such person or labor organization may request a conference with the Director or his representative concerning such alleged violation.

(b) Whenever it appears to an Area Administrator that a violation of this part (other than §§ 458.2, 458.26–458.30, or 458.37) has occurred and has not been remedied, he shall immediately notify any appropriate person and labor organization. Within fifteen (15) days following receipt of such notification, any such person or labor organization may request a conference with the Area Administrator or his representative concerning such alleged violation.

(c) At any conference held pursuant to this section, the Director or Area Administrator may enter into an agreement providing for appropriate remedial action. If no person or labor organization requests such a conference, or upon failure to reach agreement following any such conference, the Director or Area Administrator shall institute enforcement proceedings by filing a complaint with the Chief Administrative Law Judge, U.S. Department of Labor, and shall cause a copy of the complaint to be served on each respondent named therein. If an agreement is reached and the Director or Area Administrator concludes that there has not been compliance with all the terms of the agreement, he may refer the matter to the Assistant Secretary for appropriate enforcement action or file a complaint with the Chief Administrative Law Judge.

[50 FR 31313, Aug. 1, 1985]

§ 458.67 Standards complaint; initiation of proceedings.

A complaint filed under § 458.66 shall constitute the institution of a formal enforcement proceeding in the name of the Director or Area Administrator, who shall be the only complaining party in the proceeding and shall, where he believes it appropriate, refrain from disclosing the identity of any person who called the violation to his attention (except in proceedings involving violations of § 458.29, Election of officers). The complaint shall include the following:

(a) The name and identity of each respondent.

(b) A clear and concise statement of the facts alleged to constitute violations of the CSRA or FSA or of this part.

(c) A statement of the relief requested.

(d) In any complaint filed by the Director on the basis of a complaint received from a member of a labor organization pursuant to § 458.63, a statement setting forth the procedures, if any, followed to invoke available remedies, including the dates when such procedures were invoked, and the substance of any ruling or decision received by the complaining member from the labor organization or any parent body.

[45 FR 15158, Mar. 7, 1980. Redesignated at 50 FR 31311, and amended at 50 FR 31313, Aug. 1, 1985]

§ 458.68 Answer.

(a) Within twenty (20) days from the service of the complaint the respondent shall file an answer thereto with the Chief Administrative Law Judge and shall serve a copy on all parties. The answer shall be signed by the respondent or his attorney or other agent or representative.

(b) The answer (1) shall contain a statement of the facts which constitute the grounds of defense, and shall specifically admit, explain, or deny each of the allegations of the complaint unless the respondent is without knowledge, in which case the answer shall so state; or (2) shall state that the respondent admits all of the allegations in the complaint. Failure

to file an answer to or plead specifically to any allegation in the complaint shall constitute an admission of such allegation.

Subpart C—Hearing and Related Matters

§ 458.69 Notice of hearing.

The Chief Administrative Law Judge shall issue and cause to be served upon each of the parties a notice of hearing. The notice of hearing shall include the following:

(a) The name and identity of each party and the case number.

(b) A statement of the authority and jurisdiction under which the hearing is to be held.

(c) A statement of the time and place of the hearing which shall be not less than fifteen (15) days after service of the notice of hearing.

§ 458.70 Administrative Law Judge.

Each enforcement proceeding instituted pursuant to this part shall be conducted before an Administrative Law Judge designated by the Chief Administrative Law Judge for the Department of Labor except, however, that when the Administrative Law Judge approves a stipulated agreement for appropriate remedial action, he shall prepare his recommended decision and order adopting that agreement and transfer the case to the Assistant Secretary. The Assistant Secretary may order the remedial action set forth in the stipulated agreement or take such other action as he deems appropriate.

§ 458.71 Procedure upon admission of facts.

The admission of all the material allegations of fact in the complaint shall constitute a waiver of hearing. Upon such admission, the Administrative Law Judge without further hearing shall prepare his recommended decision and order in which he shall adopt as his proposed findings of fact the material facts alleged in the complaint.

§ 458.72 Motions and requests.

(a) Motions and requests made prior to the hearing shall be filed with the Chief Administrative Law Judge. The moving party shall serve a copy of all motions and requests on all other parties. Motions during the course of the hearing may be stated orally or filed in writing and shall be made part of the record. Each motion shall state the particular order, ruling, or action desired, and the grounds therefor. The Administrative Law Judge is authorized to rule upon all motions made prior to the filing of his report.

(b) A party may request the attendance of witnesses and/or the production of documents at a hearing held pursuant to this part, by written application before the hearing or orally during the hearing. Copies of an application filed before the opening of the hearing shall be served on the other parties, who may file written objections to the request within seven (7) days after such service. The Administrative Law Judge after consideration of any objections, shall grant the request provided the specified testimony and/or documents appear to be necessary to the matters under investigation. If the Administrative Law Judge denies the request he shall set forth the basis for his ruling. Upon the failure of any party or officer or employee of any party to comply with such a request which has been granted by the Administrative Law Judge, the Administrative Law Judge and the Assistant Secretary may disregard all related evidence offered by the party failing to comply with the request or take such other action as may be appropriate.

(c) Employees who have been determined to be necessary as witnesses at a hearing shall be granted official time only for such participation as occurs during their regular work hours and when they would otherwise be in a work or paid leave status. Participation as witnesses includes the time necessary to travel to and from the site of a hearing, and the time spent giving testimony and waiting to give testimony, when such time falls during regular work hours.

[45 FR 15158, Mar. 7, 1980. Redesignated at 50 FR 31311, and amended at 50 FR 31313, Aug. 1, 1985]

§ 458.73 Prehearing conferences.

(a) Upon his own motion or the motion of the parties, the Administrative Law Judge may direct the parties or their counsel to meet with him for a conference to consider:

(1) Simplification of the issues;

(2) Necessity or desirability of amendments to pleadings for purposes of clarification, simplification, or limitations;

(3) Stipulations, admissions of fact, and contents and authenticity of documents;

(4) Limitation of the number of expert witnesses; and

(5) Such other matters as may tend to expedite the disposition of the proceeding.

(b) The record shall show the matters disposed of by order and by agreement in such prehearing conferences. The subsequent course of the proceeding shall be controlled by such action.

[45 FR 15158, Mar. 7, 1980. Redesignated at 50 FR 31311, and amended at 50 FR 31313, Aug. 1, 1985]

§ 458.74 Conduct of hearing.

Hearings shall be conducted by an Administrative Law Judge and shall be open to the public unless otherwise ordered by the Administrative Law Judge.

§ 458.75 Intervention.

Any person desiring to intervene in a hearing shall file a motion in writing in accordance with the procedures set forth in § 458.72 or, if made at the hearing, may move orally on the record, stating the grounds upon which such person claims an interest. Such a motion shall be filed with the Administrative Law Judge who shall rule upon such motion.

§ 458.76 Duties and powers of the Administrative Law Judge.

It shall be the duty of the Administrative Law Judge to inquire fully into the facts as they relate to the matter before him and to prepare, serve and submit his recommended decision and order pursuant to § 458.88. Upon assignment to him and before transfer of the case to the Assistant Secretary, the Administrative Law Judge shall have the authority to:

(a) Grant requests for appearance of witnesses or production of ducuments;

(b) Rule upon offers of proof and receive relevant evidence;

(c) Take or cause depositions to be taken whenever the ends of justice would be served thereby;

(d) Limit lines of questioning or testimony which are immaterial, irrelevant, or unduly repetitious;

(e) Regulate the course of the hearing and if appropriate, exclude from the hearing persons who engage in misconduct and strike all related testimony of witnesses refusing to answer any questions ruled to be proper;

(f) Hold conferences for the settlement or simplification of the issues by consent of the parties or upon his own motion;

(g) Dispose of procedural requests, motions, or similar matters which shall be made part of the record of the proceeding, including motions to amend pleadings; also to recommend dismissal of cases or portions thereof, and to order hearings reopened prior to issuance of his recommended decision and order;

(h) Examine and cross-examine witnesses and introduce into the record documentary or other evidence;

(i) Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;

(j) Continue, at his discretion, the hearing from day-to-day, or adjourn it to a later date or to a different place, by announcement thereof at the hearing or by other appropriate notice;

(k) Take official notice of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice and also concerning which the Department of Labor by reason of its functions is presumed to be expert: *Provided,* That the parties shall be given adequate notice, at the hearing or by reference in the Administrative Law Judge's recommended decision and order, of the matters so noticed, and shall be given

adequate opportunity to show the contrary;

(l) Correct or approve proposed corrections of the official transcript when deemed necessary; and

(m) Take any other action necessary under the foregoing and not prohibited by these regulations.

[45 FR 15158, Mar. 7, 1980. Redesignated at 50 FR 31311, and amended at 50 FR 31313, Aug. 1, 1985]

§ 458.77 Rights of parties.

Any party shall have the right to appear at such hearing in person, by counsel, or by other representative, to examine and cross-examine witnesses, and to introduce into the record documentary or other relevant evidence, except that the participation of any party shall be limited to the extent prescribed by the Administrative Law Judge. Two (2) copies of documentary evidence shall be submitted and a copy furnished to each of the other parties. Stipulations of fact may be introduced in evidence with respect to any issue.

§ 458.78 Rules of evidence.

The technical rules of evidence do not apply. Any evidence may be received, except that an Administrative Law Judge may exclude any evidence or offer of proof which is immaterial, irrelevant, unduly repetitious, or customarily privileged. Every party shall have a right to present his case by oral and documentary evidence and to submit rebuttal evidence.

§ 458.79 Burden of proof.

In a hearing concerning an alleged violation of § 458.2 (Bill of rights of members of labor organizations) or § 458.37 (Prohibition of certain discipline), the complainant shall have the burden of proving the allegations of the complaint by a preponderance of the evidence. In a hearing concerning an alleged violation of §§ 458.26–458.30, the Director shall have the burden of proving the allegations of the complaint by a preponderance of the evidence. In a hearing concerning an alleged violation of other standards of conduct matters, the Area Administrator shall have the burden of proving the allegations of the complaint by a preponderance of the evidence.

[45 FR 15158, Mar. 7, 1980. Redesignated at 50 FR 31311, and amended at 50 FR 31313, Aug. 1, 1985]

§ 458.80 Unavailability of Administrative Law Judges.

In the event the Administrative Law Judge designated to conduct the hearing becomes unavailable, the Chief Administrative Law Judge shall designate another Administrative Law Judge for the purpose of further hearing or issuance of a recommended decision and order on the record as made, or both.

§ 458.81 Objection to conduct of hearing.

(a) Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, may be stated orally or in writing accompanied by a short statement of the grounds for such objection and included in the record. No such objection shall be deemed waived by further participation in the hearing. Such objection shall not stay the conduct of the hearing.

(b) Automatic exceptions will be allowed to all adverse rulings. Rulings by the Administrative Law Judge shall not be appealed prior to the transfer of the case to the Assistant Secretary, but shall be considered by the Assistant Secretary only upon the filing of exceptions to the Administrative Law Judge's recommended decision and order in accordance with § 458.88.

§ 458.82 Motions after a hearing.

All motions made after the transfer of the case to the Assistant Secretary, except motions to correct the record under § 458.76(l), shall be made in writing to the Assistant Secretary. The moving party shall serve a copy of all motion papers on all other parties. A statement of service shall accompany the motion. Answers, if any, must be served on all parties and the original thereof, together with a statement of service, shall be filed with the Assistant Secretary after the hearing, within seven (7) days after service of the moving papers unless it is otherwise directed.

§ 458.83 Waiver of objections.

Any objection not duly urged before an Administrative Law Judge shall be deemed waived.

§ 458.84 Oral argument at the hearing.

Any party shall be entitled, upon request, to a reasonable period prior to the close of the hearing for oral argument, which shall be included in the official transcript of the hearing.

§ 458.85 Transcript.

An official reporter shall make the only official transcript of such proceedings. Copies of the official transcript will be provided to the parties, in accordance with the provisions of 29 CFR 70.62(c), or they may be examined in the Area Office in whose geographic jurisdiction the hearing has been held.

§ 458.86 Filing of brief.

Any party desiring to submit a brief to the Administrative Law Judge shall file the original within ten (10) days after the close of the hearing: *Provided, however,* That prior to the close of the hearing and for good cause, the Administrative Law Judge may grant a reasonable extension of time. Copies of such brief shall be served on all of the parties to the proceeding. Requests for additional time in which to file a brief under authority of this section made after the hearing shall be made in writing to the Administrative Law Judge and copies thereof served on the other parties. A statement of such service shall be furnished. A request for extension of time shall be received not later than three (3) days before the date such briefs are due. In the absence of the Administrative Law Judge such requests shall be ruled upon by the Chief Administrative Law Judge. No reply brief may be filed except by permission of the Administrative Law Judge.

§ 458.87 Proposed findings and conclusions.

Within fifteen (15) days following the close of the hearing, the parties may submit proposed findings and conclusions to the Administrative Law Judge, together with supporting reasons therefor, which shall become part of the record.

§ 458.88 Submission of the Administrative Law Judge's recommended decision and order to the Assistant Secretary; exceptions.

(a) After the close of the hearing, and the receipt of briefs, or findings and conclusions, if any, the Administrative Law Judge shall prepare his recommended decision and order expeditiously. The recommended decision and order shall contain findings of fact, conclusions, and the reasons or basis therefor including credibility determinations, and recommendations as to the disposition of the case including the remedial action to be taken.

(b) The Administrative Law Judge shall cause his recommended decision and order to be served promptly on all parties to the proceeding. Thereafter, the Administrative Law Judge shall transfer the case to the Assistant Secretary including his recommended decision and order and the record. The record shall include the complaint, the notice of hearing, motions, rulings, orders, official transcript of the hearing, stipulations, objections, depositions, exhibits, documentary evidence and any briefs or other documents submitted by the parties.

(c) Exceptions to the Administrative Law Judge's recommended decision and order may be filed by any party with the Assistant Secretary within fifteen (15) days after service of the recommended decision and order: *Provided, however,* That the Assistant Secretary may for good cause shown extend the time for filing such exceptions. Requests for additional time in which to file exceptions shall be in writing, and copies thereof shall be served on the other parties. Requests for extension of time must be received no later than three (3) days before the date the exceptions are due. Copies of such exceptions and any supporting briefs shall be served on all other parties, and a statement of such service shall be furnished to the Assistant Secretary.

§ 458.89 Contents of exceptions to Administrative Law Judge's recommended decision and order.

(a) Exceptions to an Administrative Law Judge's recommended decision and order shall:

(1) Set forth specifically the questions upon which exceptions are taken;

(2) Identify that part of the Administrative Law Judge's recommended decision and order to which objection is made;

(3) Designate by precise citation of page the portions of the record relied on, state the grounds for the exceptions and include the citation of authorities unless set forth in a supporting brief.

(b) Any exception to a ruling, finding, conclusion, or recommendation which is not specifically urged shall be deemed to have been waived. Any exception which fails to comply with the foregoing requirements may be disregarded.

§ 458.90 Briefs in support of exceptions.

(a) Any brief in support of exceptions shall contain only matters included within the scope of the exceptions and shall contain, in the order indicated, the following:

(1) A concise statement of the case containing all that is material to the consideration of the questions presented;

(2) A specification of the questions involved and to be argued;

(3) The argument, presenting clearly the points of fact and law relied on in support of the position taken on each question, with specific page reference to the transcript and the legal or other material relied on.

(b) Answering briefs to the exceptions may be filed with the Assistant Secretary within ten (10) days after service of the exceptions.

§ 458.91 Action by the Assistant Secretary.

(a) After considering the Administrative Law Judge's recommended decision and order, the record, and any exceptions filed, the Assistant Secretary shall issue his decision affirming or reversing the Administrative Law Judge, in whole, or in part, or making such other disposition of the matter as he deems appropriate: *Provided, however,* That unless exceptions are filed which are timely and in accordance with § 458.89, the Assistant Secretary may, at his discretion, adopt without discussion the recommended decision and order of the Administrative Law Judge, in which event the findings, conclusions, and recommendations of the Administrative Law Judge, as contained in his recommended decision and order, shall, upon appropriate notice to the parties, automatically become the decision of the Assistant Secretary.

(b) Upon finding a violation of the CSRA, FSA or this Part, the Assistant Secretary may order the respondent to cease and desist from such violative conduct and may require the respondent to take such affirmative action as he deems appropriate to effectuate the policies of the CSRA or FSA.

(c) Upon finding no violation of the CSRA, FSA or this Part, the Assistant Secretary shall dismiss the complaint.

[45 FR 15158, Mar. 7, 1980. Redesignated and amended at 50 FR 31311, Aug. 1, 1985]

§ 458.92 Compliance with decisions and orders of the Assistant Secretary.

When remedial action is ordered, the respondent shall report to the Assistant Secretary, within a specified period, that the required remedial action has been effected. When the Assistant Secretary finds that the required remedial action has not been effected, he shall refer the matter to the Federal Labor Relations Authority or the Foreign Service Labor Relations Board for appropriate action.

[45 FR 15158, Mar. 7, 1980. Redesignated at 50 FR 31311, and amended at 50 FR 31313, Aug. 1, 1985]

§ 458.93 Stay of remedial action.

In cases involving violations of this part, the Assistant Secretary may direct, subject to such conditions as he deems appropriate, that the remedial action ordered be stayed.

PART 459—MISCELLANEOUS

Sec.

459.1 Computation of time for filing papers.
459.2 Additional time after service by mail.
459.3 Documents in a proceeding.

Sec.

459.4 Service of pleading and other papers under this subchapter.
459.5 Rules to be construed liberally.

AUTHORITY: 5 U.S.C. 7120, 7134; 22 U.S.C. 4117.

SOURCE: 45 FR 15165, Mar. 7, 1980, unless otherwise noted. Redesignated at 50 FR 31311, Aug. 1, 1985.

§ 459.1 Computation of time for filing papers.

In computing any period of time prescribed by or allowed by the regulations contained in Part 458 of this subchapter, the day of the act, event, or default after which the designated period of time begins to run, shall not be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday or Federal legal holiday in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or a Federal legal holiday. When the period of time prescribed or allowed is seven (7) days or less, intermediate Saturdays, Sundays, and Federal legal holidays shall be excluded from the computations. When these regulations require the filing of any paper, such document must be received by the Assistant Secretary or the officer or agent designated to receive such matter before the close of business of the last day of the time limit, if any, for such filing or extension of time that may have been granted.

§ 459.2 Additional time after service by mail.

Whenever a party has the right or is required to do some act pursuant to these regulations within a prescribed period after service of a notice or other paper upon him and the notice or paper is served on him by mail, five (5) days shall be added to the prescribed period: *Provided, however,* That five (5) days shall not be added if any extension of time may have been granted.

§ 459.3 Documents in a proceeding.

(a) *Title.* Documents in any proceeding under Part 458 of this subchapter, including correspondence, shall show the title of the proceeding and the case number, if any.

(b) *Signature.* The original of each document required to be filed under these regulations shall be signed by the party or by an attorney or representative of record for the party, or by an officer of the party, and shall contain the address and telephone number of the person signing it.

§ 459.4 Service of pleading and other papers under this subchapter.

(a) *Method of service.* Notices of hearing, decisions, orders and other papers may be served personally or by registered or certified mail or by telegraph. When service is by mail, the date of service shall be the day when the matter served is deposited in the United States mail.

(b) *Upon whom served.* All papers, except as herein otherwise provided, shall be served upon all counsel of record and upon parties not represented by counsel or by their agents designated by them or by law and upon the Assistant Secretary, or his designated officer, or agent or Administrative Law Judge where appropriate. Service upon such counsel or representative shall constitute service upon the party, but a copy also shall be transmitted to the party.

§ 459.5 Rules to be construed liberally.

(a) The regulations in this subchapter may be construed liberally to effectuate the purposes and provisions of the CSRA or FSA.

(b) When an act is required or allowed to be done at or within a specified time, the Assistant Secretary may at any time order the period altered where it shall be manifest that strict adherence will work surprise or injustice or interfere with the proper effectuation of the CSRA or FSA.

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List of CFR Sections Affected

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For the period before January 1, 1973, see the "List of Sections Affected, 1949-1963 and 1964-1972," published in three separate volumes.

1973

(Regulations published from January 1, 1973 through June 30, 1973)

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100.735-22 (gg) added 14095
102.69 Revised 3961
103.2 Added 6177
103.3 Added 9507
103.100 Amended 9506
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406 Authority citation revised 10715
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451 Authority citation revised 10715
452 Authority citation revised 10715
453 Authority citation revised 10715
460.1a Added 4509
460.2 (b) revised 4509
460.3 Revised 4509
460.5 (c) added 4509
461 Authority citation revised 10715
462 Authority citation revised 10715
464 Authority citation revised 10715
465 Authority citation revised 10715
485 Authority citation revised 10715
486 Authority citation revised 10715

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102.36 Revised *15271
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201 Nomenclature change 26449
201.15 Revised 26449
202 Nomenclature change 26449
202.17 Heading and (f) revised; (g) and (h) added 30875
203 Nomenclature change 26449
204 Nomenclature change 26449
205 Nomenclature change 26449
206 Nomenclature change 26449
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102.16 Revised ..... †6204
102.68 Revised ..... †6204
102.69 (g) revised ..... †6204
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452.47 Amended..... 37360
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102.118 (a) existing text redesignated as (a)(1); (a)(2) added..... 50662
102.136 (Subpart R) Added..... 59728

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201.15 Heading and text revised..... Δ10604
201.16 Heading and text revised..... Δ10604
202.1 (f) revised..... 50715
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204.3 Effective date established..... 58855

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102.133 Revised..... *15410
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405.3 Amended..... 59070
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406.1 (b)(2) removed; (b)(1) redesignated as (b)..... 59070
408.3 Amended..... 59070
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417 Nomenclature change..... 59070
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451.3 (a)(4) amended Δ33066

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(Regulations published from July 1, 1979 through June 30, 1980)

29 CFR 44 (45*) FR Page

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102.111 (a) revised *37426

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202 Removed *15157
203 Removed *15157
204 Removed *15157
205 Removed *15157
206 Removed *15157
207 Added *15157
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208 Added *15158
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102.42 Revised 51193
102.111 (a) authority citation correctly added 44302

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209 Interim procedures ..... †12206

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404 Incorporation by reference approval ..... †33980
405 Incorporation by reference approval ..... †33980
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409 Incorporation by reference approval ..... †33980

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29 CFR

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208 Redesignated as Part 458 and nomenclature changes 31311
209 Redesignated as Part 459 and nomenclature changes 31311
220 Added 53101
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401.19 Added 31309
402 Authority citation revised 31309
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406 Authority citation revised 31310
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417.4 (a) amended 31310
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452 Authority citation revised 31310
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452.38 (a) amended 31311
452.71 Amended 31311
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453 Authority citation revised 31311
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